



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 24, 2011

The Honorable Jim Haggerton, Mayor
City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

**Re: City of Tukwila Comprehensive Shoreline Master Program Update
Ordinance Number 2269-2272**

Dear Mayor Haggerton:

I would like to take this opportunity to commend the city of Tukwila (City) for its efforts in developing the proposed comprehensive Shoreline Master Program (SMP) Update. It is consistent not only with the needs of the City, but also with the policy and procedural requirements of the Shoreline Management Act (SMA) and the SMP Guidelines.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) approves this comprehensive SMP update, subject to required changes detailed in Attachment B. Recommended changes are proposed in Attachment C. The findings and conclusions that support Ecology's decision are enclosed as Attachment A. Also enclosed is a Responsiveness Summary for Public Comments as Attachment D.

Because required changes are involved in this proposed SMP, the amendment will not become effective until Ecology receives written notice that the City agrees to the changes¹. Receipt of the City's written agreement to the required changes will constitute final action by Ecology approving the Tukwila SMP comprehensive update.

If you do not agree to the changes listed in Attachment B, then pursuant to WAC 173-26-120(7)(b)(ii), you may propose to Ecology alternative amendments consistent with the scope of the original submittal, SMA policy and the applicable guidelines. At that point, Ecology will need to review and approve the alternative amendment(s) before they become effective.

¹ WAC 173-26-120(7)(b)(i)



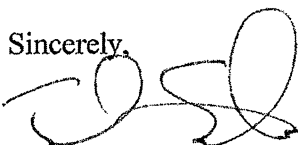
The Honorable Jim Haggerton
March 24, 2011
Page 2

To summarize, please advise us whether the required and recommended changes are acceptable. If the City agrees with the changes, it must notify Ecology in writing by sending the notice to the Director's Office at the following address:

WA State Department of Ecology
Attention: Director's Office
PO Box 47600
Olympia, WA 98504-6700

Thank you again for your efforts. If you have any questions, please contact our Regional Planner, David Radabaugh, at david.radabaugh@ecy.wa.gov / (425) 649-4260.

Sincerely,



Ted Sturdevant
Director

Enclosures

By certified mail [7003 1010 0005 0569 1505]

cc: Nora Gierloff, Deputy Director, Tukwila DCD
Carol Lumb, Senior Planner, Tukwila DCD
Jackie Pace, Director, Tukwila DCD
David Radabaugh, Department of Ecology
Peter Skowlund, Department of Ecology
Geoff Tallent, Department of Ecology

Attachment A

**ATTACHMENT A:
FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE OF THE CITY OF TUKWILA
SHORELINE MASTER PROGRAM**

SMP Submitted April 9, 2010, Ordinance Numbers 2269, 2270, 2271, and 2272
Prepared by David Radabaugh, on February 28, 2011

Brief Description of Proposed Amendments:

The City of Tukwila is proposing a comprehensive update to their Shoreline Master Program (SMP). The updated SMP will reside as stand-alone chapters within the Tukwila Comprehensive Plan and Municipal Code.

FINDINGS OF FACT

Need for Amendment: The proposed amendments are needed to comply with the statutory deadline for comprehensive update of the local Shoreline Master Program pursuant to RCW 90.58.080.

Amendment History, Review Process: The record indicates the proposed SMP amendments originated from a local planning process that began in 1999. The City established a Shoreline Advisory Committee, which met between September 22, 1999 and March 8, 2000. The Tukwila Planning Commission considered the SMP between May 18, 2000 and September 11, 2002. The local planning process stopped in 2002, after it became clear that Ecology was in the final stages of crafting new Guidelines for the update of SMPs. Ecology adopted new SMP Guidelines in December 2003.

The City of Tukwila restarted its shoreline planning process in 2005 with a grant from the Department of Ecology (Grant No. G0600234). A public hearing before the Planning Commission was held on August 27, 2008, continued to October 9, 2008. Notice of this hearing was published in the Seattle Times on August 22, 2008. An open house was held on January 7, 2009. The City Council held a public hearing on April 20, 2009, continued to July 13, 2009. Notice of this hearing was published in the Seattle Times on April 6, 2009.

During the development of its SMP, the City received comments from property owners and their representatives, environmental organizations, and government agencies.

The Department of Ecology provided comments on the Draft SMP on January 22, 2009 and June 30, 2009.

The City issued a Determination of Nonsignificance for the SMP on August 13, 2008. With passage of Resolutions 2269, 2270, 2271, 2272, on December 14, 2009, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on June 30, 2010. The state comment period began on September 15, 2010 and continued through October 15, 2010. On September 29, 2010, Ecology held a public hearing in Tukwila to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the September 8, 2010 edition/s of the Seattle Times, the City official newspaper of record. Notices were mailed to interested parties identified by the City on September 8, 2010. Ten individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral and written comments it received to the City on November 2, 2010. On December 10, 2010, the City submitted to Ecology its responses to issues raised during the state comment period. Ecology's own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3),(4) and (5). The City has also provided evidence (see above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

Consistency with "applicable guidelines" (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the city.

Ecology reviewed the SMP inventory and characterization report, the restoration plan, and cumulative impacts analysis for consistency with the Guidelines. Ecology reviewed the SMP goals, policies, regulations, environment designations, maps, administrative provisions, definitions, and legal provisions for consistency with the Guidelines.

The Inventory and Characterization Report and Chapters 4 and 7 of the SMP provide a foundation for the environment and buffer system contained in the SMP. The SMP contains provisions for shoreline environments, archaeological and historic resources, critical areas, flood hazard reduction, public access, shoreline vegetation conservation, water quality, storm water, and nonpoint pollution, shoreline stabilization, piers and docks, fill, and dredging. Breakwaters, jetties, groins, and weirs are not permitted in the Tukwila SMP. Shoreline habitat and natural systems enhancement is addressed through the restoration plan, buffer, and landscaping requirements.

The SMP addresses future uses that could be relevant to the Tukwila shoreline including agriculture, aquaculture, boating facilities, commercial development, industry, in-stream structural uses, mining, recreational development, residential development, transportation and parking, and utilities. The SMP also addresses shorelines of statewide significance. The SMP

contains procedures for administering the shoreline regulations through an established permitting system.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendments on August 13, 2008. Copies of the DNS were sent to interested parties pursuant to City SEPA procedures. Ecology did not comment on the DNS

Other Studies or Analyses supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared for the City/County in support of the SMP amendment:

- Draft Shoreline Inventory and Characterization Report dated December 2006
- Shoreline Inventory and Characterization Report dated May 2007
- Shoreline Restoration Plan dated May 2007
- Shoreline Restoration Plan dated November 2009
- Cumulative Impacts Analysis dated December 2009
- SEPA Checklist dated August 2008
- Draft Shoreline Master Program dated July 24, 2008
- Draft Shoreline Master Program dated February 5, 2009

Summary of Issues Raised During The Public Review Process: There was considerable public interest expressed during the City's SMP amendment drafting/public review process. Ecology conducted a formal public comment period and public hearing during its review of the SMP. Issues raised during the Ecology comment period have been addressed in the attached responsiveness summary. Considerable debate centered on the following topics:

Buffer Widths

The SMP proposes buffer widths of 100 feet in the High Intensity environment, a minimum of 50 feet in the Shoreline Residential environment, 100 feet in the Urban Conservancy environment without levees, and 125 feet in the Urban Conservancy environment with levees. Concern was raised during the development of the SMP that the buffer widths lacked flexibility and that many individual sites could merit smaller buffers. Representatives of several members of the public recommended establishment of a framework allowing for parcel specific buffers or buffer reduction provisions based on achieving no net loss of ecological function on a parcel level basis.

Section 7.5 of the SMP discusses the rationale for the buffer widths. This section notes that the purposes of the buffers are to:

- a. Support shoreline ecological resources, especially salmonids. This includes area to support vegetated shoreline buffers to allow for shading to maintain relatively cooler

water temperatures, higher dissolved oxygen, filter pollutants, recruit large woody debris, and provide biotic input into the river system.

- b. Provide bank stability and protection of human lives and structures. Lowering the gradient of the levees will reduce maintenance costs, provides additional flood storage, and allows for a vegetated mid-slope bench.

Additional, the Cumulative Impacts Assessment (CIA) provides a qualitative assessment of the effect of the proposed buffer widths. The CIA notes that buffers, unto to themselves will not result in a change in ecological performance due to on-going levee maintenance, the setback levees will result in eventual improvement of ecological function with vegetation enhancement on the envisioned mid-slope benches on the levees.

Creation of Nonconforming Uses and Structures.

The buffer widths in the SMP will create some nonconforming buildings and uses. This is a particular concern of commercial property owners when a change in tenants may create a new use in a nonconforming portion of a structure. Owners of commercial buildings are concerned that such rules will make it difficult to fill vacancies where new tenants may be proposing a different use as classified in the zoning code than the previous use.

Section 14.5.A.5 creates a process by which the City can allow for the approval of a new nonconforming use in an existing building after a change in tenants. Additionally, a required change to this SMP will be the inclusion of a use matrix identifying permitted uses rather than adoption of the zoning code use standards. The use matrix will provide for more broadly described use categories than the Zoning Code's use categories. Thus, it will become less likely that a change in use will involve a change to a different shoreline use category. For uses outside of the shoreline buffer, this change will likely result in fewer changes in shoreline use.

Public Access

The SMP requires dedication of easements and/or construction of public access for qualifying development. Concern has been expressed in public comments that the public access trail construction requirements may not be proportional to the impact that a given project may have on public access demand. It is suggested in the public comments that the SMP be modified to require public access only when the requirements are roughly proportional to, or reasonably necessary as a direct result of, the impacts from the proposed shoreline development.

Section 11.6.A.3 of the SMP allows that "requirements for providing on-site general public access, as distinguished from employee access, will not apply if the applicant can demonstrate one or more of the following: the cost of providing the access, easement or other public amenity on or off the development site is unreasonably disproportionate to the total long-term cost of the proposed development." The SMP effectively includes a provision allowing for proportionality

in public access requirements. Included with the required changes is a change to Section 11.6.A making it clear that Section 11.6.A.3 applies to both onsite and offsite activities.

Landscaping Requirements

The SMP requires that the buffer be landscaped when development is proposed. Concern has been expressed in public comments that imposing a requirement for installation and maintenance of vegetation and landscaping without consideration of an individual need for such requirement would be inconsistent with the SMA and the Shoreline Guidelines.

WAC 173-26-221(5) requires SMPs to make provision for and have standards for vegetation conservation and restoration as necessary to achieve no net loss of shoreline ecological functions. Establishment of shoreline vegetation is an important aspect of the Tukwila SMP. Section 9.10.C.1 of the SMP allows for a reduced level of landscaping for smaller projects.

Shoreline Environment Designation

The SMP designates the shoreline on the left bank of the Green River between Interurban Avenue South and Interstate 405 as Shoreline Residential. Concern has been raised in public comments that this shoreline should be designated Urban Conservancy.

This site contains a substantial amount of riparian vegetation. For Tukwila, the riparian vegetation helps to retain important ecological functions even though the area is developed with highways and levees. Approximately 100 feet of this area landward of the Ordinary High Water Mark (OHWM) is in public ownership. While an Urban Conservancy designation would provide this area with a larger buffer than the Shoreline Residential designation, the buffer area is in public ownership. The shoreline Residential designation actually allows fewer uses and less intensive uses than the Urban Conservancy Environment. While an Urban Conservancy environment designation is supportable for the site adjacent to Tukwila Park extending along the left bank of the Green River from Interurban Avenue to Southcenter Boulevard, it would not result in greater protection of the site.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Incorporation of Zoning Code Use Provisions and Use Matrix

The SMP has proposed to incorporate the Tukwila Zoning Code use provisions. As proposed, a reader would need to turn to the Tukwila Zoning code in order to determine permissible uses in the SMP. The zoning code can allow for uses that could cause harm to the shoreline environment such as airports and numerous industrial uses. The zoning code also makes reference to provisions that are unworkable in shoreline jurisdiction such as a provision for an unclassified use permit. A SMP must be in a form that is implementable. This is supported by RCW 90.58.090(7) and WAC 173-26-211(4)(a)(IV).

The required changes include a use matrix that somewhat narrows the scope of uses in the shoreline environment to focus more on water-dependant uses and uses that are environmentally consistent with the shoreline environment. The use matrix does recognize the existing commercial and industrial nature of many uses along the Green River in Tukwila in that non-water oriented industrial uses will still be allowed in shoreline jurisdiction.

The Tukwila Zoning Code makes no reference to the water oriented use preferences articulated in WAC 173-26-201(2)(d). While the use matrix and use standards in Chapter 8 of the Tukwila SMP allow for many non-water oriented uses in shoreline jurisdiction, a preference is made for water oriented uses in a manner that recognizes historic land use patterns in the City.

Identification of the Black River Within Shoreline Jurisdiction

The Black River has been identified as being within shoreline jurisdiction in both WAC 173-18-210 and the Renton SMP. Required changes to the Tukwila SMP will include the Black River within Tukwila as shoreline jurisdiction. Portions waterward of the OHWM will be designated Aquatic. Portions landward and within 200 feet of the OHWM will be designated Urban Conservancy.

Aquatic Designation

The City of Tukwila adopted an SMP without an Aquatic designation, but has since concluded that an Aquatic designation would be beneficial. The required changes include designating all areas waterward of the ordinary high water mark as Aquatic. Policies and regulations relating to the Aquatic environment are included in the required changes. This demonstrates consistency with WAC 173-26-211(5)(c).

Aquaculture

The SMP adopted by the City of Tukwila did not address aquaculture. Proposals for new aquaculture in the future within the City of Tukwila will therefore require review and approval of an unclassified CUP, consistent with WAC 173-27-160(3).

The Lower Duwamish River portion of the Tukwila shoreline is a Superfund site. The Department of Health recommends against consumption of fish or crab taken in the Lower Duwamish River with the exception of salmon (which are migratory). The Green River, south of its confluence with the Black River is on the Clean Water Act, Section 303(d) list for temperature, fecal coliform, and dissolved oxygen.

Accessory Use

A definition of accessory use is added to the SMP. This provision will help to clarify the appropriate use of accessory uses when implementing the SMP.

Minimum Buffers

While the SMP has provisions for standard prescriptive buffers, it also makes provision for reduced buffers if levees are modified to reduce their profile and allow for 15 foot wide area for vegetation. As proposed, the SMP contains some scenarios where there could be no minimum buffer when reduced pursuant to the SMP. The SMP contains natural environment and habitat use policies in Section 6.9 that require no net loss of ecological function and requires protection of wildlife, vegetation, wetlands, and watercourses. Table 3 within the SMP requires, in many cases, that buffers that are reduced under these provisions to be no less than 50 percent of the width of the standard buffers. Given that the standard buffers in question are 100 or 125 feet, this results in a modified buffer that is no less than 50 feet. In order to ensure internal consistency with these portions of the SMP, a required change to the SMP specifies that the buffer must be a minimum of 50 feet when the buffer reduction standards are met.

Signs

The adopted SMP incorporates Tukwila's sign code, allowing a broad array of signs in shoreline jurisdiction. A required change limits signs in shoreline jurisdiction to interpretive, water related, public safety, and road purposes.

Uses in Buffers

A modification to the SMP is included in the required changes that only allows non-water oriented essential public facilities within buffers if there is no feasible location available outside of the buffer.

Building Height Restrictions

The SMP proposes to allow building height to be increased to the maximum allowed under the zoning code (115 feet in some cases) if an applicant constructs a shoreline trail to City specifications in a manner consistent with the City's Green River Trail Plan. Building heights of 115 feet in shoreline jurisdiction are not analyzed in the Cumulative Impacts Analysis. A required change is included eliminating the SMP reference to zoning height limits and requiring an analysis of view blockage and environmental impacts.

The adopted SMP allows increased building height as an incentive for both public access and enhancement of vegetation in the shoreline buffer. A required change to the SMP makes it clear that if a building is proposed with a height of greater than 35 feet, then there must be a demonstration that the proposed building will not block the views of a substantial number of residences consistent with RCW 90.58.320.

Required changes have been included that require any development over 35 feet in height to analyze whether the views of a substantial number of residences will be blocked. Additionally,

the height limit references to the zoning code proposed in the SMP will be removed by the required changes.

A required change establishes the height limit for buildings in the Shoreline Residential Environment at 30 feet. While the zoning code is not referenced or incorporated in the required changes, this limit is consistent with the Tukwila Zoning Code.

One comment letter suggested that RCW 90.58.320 should be read to mean that the SMA applies a 35 foot building height limit only if the City has demonstrated that the building will block views of a substantial number of residents. RCW 90.58.320 creates a minimum requirement. It does not restrict a local government's ability to limit building height in shoreline jurisdiction.

Wetland Manual and Mitigation

Required changes have been included to make the wetland protection provisions contained with the SMP consistent with the current Ecology guidance regarding wetland protection.

Restoration Provisions

Prior to the adoption of EHB 2199, the City of Tukwila was developing provisions for regulatory relief for property that is brought into shoreline jurisdiction because a restoration project has moved the ordinary high water mark. EHB 2199 subsequently became law and has been codified as RCW 90.58.580. The regulatory relief being drafted by the City can be read to be inconsistent with the requirements of RCW 90.58.580. Therefore, a required change is included to make it clear that the provisions of RCW 90.58.580 is applicable. The relief provisions drafted by the City can be utilized as guidance in a manner that is consistent with RCW 90.58.580.

Flood Plains

Ecology requires and updated the discussion of floodplain management in the SMP. A required change identified the updated discussion in an underline/strikeout format in Chapter 4 of the SMP. The text modifications address the current status of levees in Tukwila.

Typographical Error

A minor typographical error is addressed in required change 6.

Mitigation Sequencing

A required change clarifies that mitigation sequencing is a requirement for all projects consistent with WAC 173-26-201(2)(e)(i).

Shoreline Permits

A required change eliminates a requirement for a Type II permit from the SMP. The Type II permit was proposed by the City to address concerns about shoreline exempt projects in critical areas. While this is a legitimate concern on the part of the City, the concern can be addressed through suggested change 12 requiring a written exemption for such activities.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, together with responses to public comment (summarized in Attachment D), Ecology concludes that the City's SMP proposal, subject to and including Ecology's required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments. City officials have been briefed regarding the content of both the required and recommended changes.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments with required changes, is effective on the date at which Ecology receives written notice that the City has agreed to the required changes.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

Attachment B

**ATTACHMENT B:
REQUIRED CHANGES
FOR PROPOSED COMPREHENSIVE UPDATE OF THE CITY OF TUKWILA
SHORELINE MASTER PROGRAM**

March 14, 2011

**Changes are represented in bill format: additions are underlined;
deletions are ~~struck through~~**

See also Attachment A: Findings and Conclusions for change rationale

- 1. The shoreline environment map shall be revised showing parcel boundaries and at a minimum scale of 1 inch representing .1 mile with the following changes:**
 - a. All areas waterward of the ordinary high water mark shall be designated Aquatic.**
 - b. All areas waterward of the ordinary high water mark of the Black River shall be designated Aquatic.**
 - c. All areas landward and within 200 feet of the ordinary high water mark of the Black River shall be designated Urban Conservancy.**
- 2. The first paragraph of Section 1.2.B shall be modified to read:**

The Green/Duwamish River is the only "shoreline of statewide significance" in the city (RCW 98.58.030). A small portion of the Black River, a shoreline of the state, is also located in Tukwila. Throughout the SMP document, the term "Shoreline Jurisdiction" is used to describe the water and land areas subject to shoreline jurisdiction in Tukwila. Based on SMA guidelines for shoreline jurisdiction, Tukwila's Shoreline Jurisdiction is defined as follows:

The Tukwila Shoreline Jurisdiction includes the channel of the Green/Duwamish River and the Black River, its banks, the upland area which extends from the ordinary high water mark landward for 200 feet on each side of the river, floodways and all associated wetlands within its floodplain. For the purpose of determining shoreline jurisdiction only, the floodway shall not include those lands that have historically been protected by flood control devices and, therefore, have not been subject to flooding with reasonable regularity.

- 3. Add a definition of accessory use to Section 3, as follows:**

Accessory use: An accessory use is a use associated with the principle use on a shoreline property that is subordinate and incidental to the principle use. An accessory use must be minor in nature and compatible with uses in the immediate vicinity.

4. Section 4 4.1, and 4.5 shall be modified as follows:

4. SHORELINE INVENTORY AND CHARACTERIZATION - SUMMARY

Local jurisdictions updating their Shoreline Master Program (SMP) are required to prepare an inventory and characterization of the shoreline resources within their boundaries. As part of the City's SMP update, a Draft Inventory and Characterization Report and Map Folio was prepared in December 2006, and finalized in the spring of 2007 following technical review by Ecology and King County. The final report and map folio are included as Appendix A to this SMP. While the report has been finalized, the City continues to utilize the most recent information available, such as the recently updated FEMA Revised Preliminary Digital Flood Insurance Rate Maps (DFIRM), which were issued after the completion of the Inventory and Characterization report.

The purpose of the inventory and characterization report was to conduct a baseline inventory of conditions for water bodies regulated as "shorelines of the state" located in the City of Tukwila. The area regulated under Tukwila's SMP is approximately 12.5 linear miles along the banks of the Green/Duwamish River.

For the baseline inventory, the river shoreline was divided into four reaches: 1) Reach G1-PAA (southern Potential Annexation Area); 2) Reach G1 (from the southern City boundary downstream to the Black River/Green River confluence); 3) Reach G2 (from the Black River/Green River confluence downstream to the northern City limits); and 4) Reach G2-PAA (the northern Potential Annexation Area). The reaches are depicted on **Map 3**.

The shoreline characterization identifies existing conditions, identifies current uses and public access, evaluates functions and values of resources in the shoreline jurisdiction, and explores opportunities for conservation and restoration of ecological functions. The findings are intended to provide a framework for updates to the City's shoreline management goals, policies, and development regulations. Key findings of the inventory and characterization are summarized below.

4.1 Watershed Context and Shoreline Modifications

The City of Tukwila includes approximately 12.5 miles of the Green/Duwamish River and is situated in the Puget Sound Lowlands at the transition from the fresh water Green River to the tidally influenced Duwamish estuary ecosystem. The Green River basin is part of the Green/Duwamish Water Resource Inventory Area (WRIA 9).

Historically, the Green/Duwamish River drained a significantly larger area than it does today. The Green/Duwamish River has undergone extensive modifications in the past to reduce channel migration and limit the extent and duration of valley flooding. The modifications include both natural river course changes and major engineering projects in the early part of the 20th century that diverted the White, Black and Cedar Rivers to neighboring basins. As a result, the overall freshwater discharge in the Green/Duwamish River has been reduced to around a third of the pre-diversion era.

Seven pump stations also modify flows into the Green and Duwamish Rivers. Three of the pump stations, Black River, P-17, and Segale, are operated by the Green River Flood Control District, and four stations, Lift Stations 15, 17, 18, and 19 are operated by the City of Tukwila. The Black River pump station is the largest station discharging flows to the Duwamish River. This station is approximately 1,000 feet upstream of the Green – Black River confluence, and is intended to both block floodwaters from the Green from inundating the Black River and Springbrook Creek in the City of Renton, and also regulates flows from Springbrook Creek into the Duwamish River. The P-17 pump station drains the P-17 Pond that collects surface water from a majority of the Urban Center. The Segale pump station was installed to regulate soil saturation and piping during high river events but does not add new flows to the river. The remaining City pump stations only operate when gravity discharge to the river is prevented by high river events.

Levees and/or revetments were constructed along much of the Green/Duwamish River through the City of Tukwila to increase bank strength and reduce flooding. In addition, flows within the Green/Duwamish River were greatly modified by the construction of the Howard A. Hansen Dam and installation of water diversions. These modifications significantly reduced the severity of floods that historically covered much of the valley bottom. The condition of the current system of levees and revetments is a growing source of concern for King County and the cities involved, as many of the levees are aging and would do not meet current standards for either flood conveyance or stability. Aside from the Tukwila 205 certified levee on the left bank of the river in the Urban Center, other levees in the City do not meet COE standards and are mapped as flood plain. These include portions of the newly annexed Tukwila South area and levees along the right bank of the river. Current development proposals in Tukwila South include the relocation of the cross-valley and reconstruction of the non-certified levees to meet COE standards. The permitting for this work is on-going.

4.5 Conclusions

Like many rivers in the Puget Sound region, the course and dynamics of the Green/Duwamish River has changed significantly as a result of development and alteration of its watershed over the past century or so. Characteristic of many cities in the

region, Tukwila has grown and become highly urbanized. Continued growth is anticipated and the City is planning for that growth. To a significant degree, the City has envisioned and maintained a development pattern that preserved public access to the Green River and assured setbacks of new buildings from the shoreline. Issues of concern today are focused on ~~uncertainties about the ability of~~ reconstructing existing levees and revetments to protect existing development from flood hazards, an effort that will take place over a number of years in coordination with the King County Flood Control Zone District, King County and state and federal agencies. There are many opportunities for conservation and restoration actions in the City to restore or replace habitat while managing natural hazard areas.

5. Add in Section 6.1, a Policy 5.1.4 to read:

Policy 5.1.4: Shoreline Aquatic Environment Management Policies. In the Shoreline Aquatic Environment, priority shall be given to the following:

- Uses that preserve or restore the natural character of the shoreline or promote preservation of vegetation, open space, flood plain or sensitive area lands;
- Water dependent uses
- Uses that remove shoreline armoring, unless required for a shoreline dependent use, and uses that prevent and/or minimize flood damage;
- Uses that minimize interference with navigation and flood control, consider impacts to public views , and allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration;
- Uses that provide public access and public recreation whenever feasible and ecological impacts can be mitigated;
- Development that is compatible with the natural and biological limitations of the land and water that do not require extensive alteration of the shoreline or new shoreline stabilization, except for restoration projects.
- Uses that provide public access and public recreation whenever feasible and ecological impacts can be mitigated;
- Enhancement and restoration of ecological functions; and
- Uses compatible with the adjoining shoreline environments.

6. Revise paragraph 2 of Section 7.3 as follows:

The guidelines (WAC 173-26-211 (4) (b)) recommend six basic environment designations: high intensity; shoreline residential; urban conservancy; rural conservancy; natural resource; and aquatic. Local governments may establish a different designation system, retain their current

environment designations and/or establish parallel environments provided the designations are consistent with the purposes and policies of the guidelines (WAC 173-26-211 (4)(c)). The guidelines also note that local shoreline environment designations should be consistent with the local comprehensive plan (WAC 173-26-211 (3)).

7. **Revise Table 3 in Section 7.4, as follows:**

Table 3. Summary of Buffer Widths for Land Use Zones and Shoreline Ecological Conditions

Area	Characteristics	Environment	Buffer	Modification
MIC/H & MIC/L Zoned property from North City Limits to EMWS Bridge, and North Potential Annexation Area	Fresh/Salt water Transition Zone, Lower flooding risk, Less than 20' difference from OHWM to top of bank, tidal influence	High Intensity	100'	<p>The Director may reduce the standard buffer on a case-by-case basis by up to 50% upon construction of the following cross section:</p> <ul style="list-style-type: none"> - 1. reslope bank from OHWM (not toe) to be no steeper than 3:1, using bioengineering techniques - 2. Minimum 20' buffer landward from top of bank - 3. Bank and remaining buffer to be planted with native species with high habitat value <p>Comment: Maximum slope is reduced due to measurement from OHWM and to recognize location in the Transition Zone where pronounced tidal influence makes work below OHWM difficult. Any buffer reduction proposal must demonstrate to the satisfaction of the Director that it will not result in direct, indirect or long-term adverse impacts to the river. In all cases a buffer enhancement plan must also be approved and implemented as a condition of the reduction. The plan must include using a variety of native vegetation that improves the functional attributes of the buffer and provides additional protection for the shoreline ecological functions.</p>
LDR Zoned property w/o levees from EMWS to I-405	Moderate flooding risk, Less than 25' difference from OHWM to top of bank, tidal influence on northern section	Shoreline Residential	Distance required to set back slope from toe at 2.5:1 plus 20'	Removal of invasive species and replanting with native species of high habitat value voluntary unless triggered by requirement for a Shoreline Substantial Development permit

Area	Characteristics	Environment	Buffer	Modification
			setback, Min. 50' width	
LDR Zoned property with levees from EMWS to I-405	Moderate flooding risk, Less than 25' difference from OHWM to top of bank, tidal influence on northern section	Shoreline Residential	125'	Upon reconstruction of levee in accordance with minimum profile, the Director may reduce the buffer to actual width required. Comment: this applies to City-owned property at Fort Dent.
Commercially zoned property from 42 nd Ave S. Bridge to I-405	Moderate flooding risk, Less than 25' difference from OHWM to top of bank	Urban Conservancy	100'	<p>The Director may reduce the standard buffer on a case-by-case basis by up to 50% upon construction of the following cross section:</p> <ul style="list-style-type: none"> • reslope bank from toe to be no steeper than 2.5:1 using bioengineering techniques • Minimum 20' buffer landward from top of bank • Bank and remaining buffer to be planted with native species with high habitat value <p>Any buffer reduction proposal must demonstrate to the satisfaction of the Director that it will not result in direct, indirect or long-term adverse impacts to shoreline ecological functions. In all cases a buffer enhancement plan must also be approved and implemented as a condition of the reduction. The plan must include using a variety of native vegetation that improves the functional attributes of the buffer and provides additional protection for the shoreline ecological functions.</p>
West River bank from I-405 to South City Limit, Tukwila 205 Levee and South Annexation Area	High flooding risk, Federally certified and County levee, large water level fluctuations	Urban Conservancy	125'	Upon construction or reconstruction of levee in accordance with City minimum profile the Director may reduce the buffer to the actual width required. <u>In no case shall the reduced buffer be less than 50 feet.</u>
East River bank without levee from I-405 south to City Limits	Moderate flooding risk, 20 to 25' difference from OHWM to top of bank, Moderate slumping risk, large	Urban Conservancy	100'	<p>The Director may reduce the standard buffer on a case-by-case basis by up to 50% upon construction of the following cross section:</p> <ul style="list-style-type: none"> - 1. reslope bank from toe to be no steeper than 2.5:1, using

Area	Characteristics	Environment	Buffer	Modification
	water level fluctuations			bioengineering techniques - 2. Minimum 20' buffer landward from top of bank - 3. Bank and remaining buffer to be planted with native species with high habitat value Any buffer reduction proposal must demonstrate to the satisfaction of the Director that it will not result in direct, indirect or long-term adverse impacts to shoreline ecological functions. In all cases a buffer enhancement plan must also be approved and implemented as a condition of the reduction. The plan must include using a variety of native vegetation that improves the functional attributes of the buffer and provides additional protection for the shoreline ecological functions.
East River bank with levee from I-405 to South City Limit	Moderate flooding risk, 20 to 25' difference from OHWM to top of bank, Moderate slumping risk, large water level fluctuations	Urban Conservancy	125'	Upon reconstruction of levee in accordance with City minimum profile the Director may reduce the buffer to the actual width required for the levee. <u>In no case shall the reduced buffer be less than 50 feet.</u>
Any shoreline environment where street or road runs parallel to the river through the buffer				End buffer on river side of existing improved street or roadway.

8. Revise paragraph 9 of Section 7.7.C as follows:

As an alternative to the 125 foot buffer for leveed areas, a property owner may construct levee or riverbank improvements that meet the Army Corps of Engineers, King County Flood Control District, and City of Tukwila minimum levee profile. These standards at a minimum shall include an overall slope of 2.5:1 from the toe of the levee to the riverward edge of the crown, a 15 foot mid slope bench, 18' access across the top of the levee, a 2:1 back slope, and an additional 10 foot no-build area measured from the landward toe for inspection and repairs. In instances where an existing building that has not lost its nonconforming status prevents the complete construction of the minimum levee profile, achieving an overall slope of 2.5:1 may be difficult – however, the slope should be as close to 2.5:1 as possible. In no case shall the reduced buffer be less than 50 feet.

9. Revise paragraph 4 of Section 7.8.B as follows:

As an alternative to the 100 foot buffer, a property owner may reslope the river bank to a maximum-3:1, provide a 20 foot setback from the top of the new slope and vegetate both the river bank and the 20 foot setback area in accordance with the standards in the Vegetation Protection and Landscaping Section. The property owner must also demonstrate that this approach will not result in a loss of ecological functions of the shoreline. In no case shall the reduced buffer be less than 50 feet. In areas of the river where this condition currently exists or where the property owner has constructed these improvements, the buffer width will be the actual distance as measured from the Ordinary High Water Mark to the top of the bank plus 20 feet.

10. Add Section 7.9 as follows:

Section 7.9 Aquatic Environment

A. Designation Criteria: All water bodies within the City limits and its potential annexation areas under the jurisdiction of the Shoreline Management Act waterward of the ordinary high water mark. The aquatic environment includes the water surface together with the underlying lands and the water column.

B. Purpose: The purpose of this designation is to protect the unique characteristics and resources of the aquatic environment by managing use activities to prioritize preservation and restoration of natural resources, navigation, recreation and commerce and by assuring compatibility between shoreland and aquatic uses.

11. Section 8 shall be revised as follows. A new shoreline use matrix is added in a new Section 8.2.

8. SHORELINE USE REGULATIONS

This section specifies the uses that are permitted outright, permitted as a Conditional Use, or prohibited altogether for each Shoreline Environment. Also included are special conditions and general requirements controlling specific uses. These regulations are intended to implement the purpose of each Shoreline Environment designation adopted with this SMP and will be codified in TMC 18.44. Additional regulations and performance standards that apply to all Shoreline Environments are included in Sections 9-14 of this SMP. These will also be codified in TMC 18.44.

8.1 General Use Regulations

- A. All shoreline uses shall meet the requirements listed below.
- B. The first priority for City-owned property within the shoreline jurisdiction shall be reserved for water-dependent uses including but not limited to habitat restoration, followed by water-enjoyment uses, public access, passive recreation, passive open space uses, or public educational purposes.
- C. No hazardous waste handling, processing or storage is allowed within the SMA shoreline jurisdiction, unless incidental to a use allowed in the designated shoreline environment and adequate controls are in place to prevent any releases to the shoreline/river.
- D. Overwater structures, shall not cause a net loss of ecological function, interfere with navigation or flood management, or present potential hazards to downstream properties or facilities. They shall comply with the standards in the Overwater Structures Section.
- E. Parking as a primary use is not permitted, except for existing Park and Ride lots, where adequate stormwater collection and treatment is in place to protect water quality. Parking is permitted only as an accessory to a permitted, conditional or unclassified use in the shoreline jurisdiction.
- F. All development, activities or uses unless it is an approved over water, flood management structure, or shoreline restoration project shall be prohibited waterward of the OHWM.

8.2 Interpretation of Use Matrix

A. The shoreline use table in Section 8.3 indicates whether a specific use or activity is allowed within each of the shoreline environments and whether it is permitted outright or allowed only as a shoreline conditional use.

B. In the table, shoreline environments are listed at the top of each column and the specific uses are listed along the left-hand side of each horizontal row. The cell at the intersection of a column and a row indicates whether a use may be allowed in a specific shoreline environment and whether additional use criteria apply. The table should be interpreted as follows:

- 1. If the letter 'P' appears in the box at the intersection of the column and the row, the use may be allowed within the shoreline environment if the underlying zoning also allows

the use. Shoreline (SDP, CUP and Variance) permits may be required.

2. If the letter "C" appears in the box at the intersection of the column and the row, the use may be allowed within the shoreline environment subject to the shoreline conditional use review and approval procedures specified in Section 14.3 of this SMP.
3. If the letter "X" appears in the box at the intersection of the column and the row, the use is prohibited in that shoreline environment.

8.3 Use matrix

SHORELINE USE MATRIX

<u>P = May be allowed subject to development standards and permitting requirements set forth in this SMP; C = May be allowed as a Shoreline Conditional Use; X = the use or activity is prohibited in shoreline jurisdiction. This table is a summary. Individual notes modify standards in this table. Detailed use standards are found in the text of the SMP. Permitted or conditional uses listed herein may also require a shoreline substantial development permit and other permits.</u>							
	<u>Shoreline Residential Buffer (1)</u>	<u>NonBuffer</u>	<u>Urban Conservancy Buffer(2)</u>	<u>NonBuffer</u>	<u>High Intensity Buffer(3)</u>	<u>NonBuffer</u>	<u>Aquatic Environment</u>
AGRICULTURE							
Farming and farm-related activities	X	X	X	P	X	X	X
COMMERCIAL (4)							
General	X	X	X	P (8)	X	P (8)	P (5)
Automotive services, gas (outside pumps allowed), washing, body and engine repair shops (enclosed within a building)	X	X	X	C (8)	X	C (8)	X
Contractors storage yards	X	X	X	C (8)	X	C (8)	X
Water-oriented uses	P	P	P	P	P	P	X
CIVIC/INSTITUTIONAL							
General	X	P	X	P	X	P	X
ESSENTIAL PUBLIC FACILITY (Water Dependent)	C	C	C	C	C	C	P (5)
ESSENTIAL PUBLIC FACILITY (Nonwater Dependent) (9)	C	C	C	C	C	C	C (5)
FLOOD HAZARD MANAGEMENT							
Flood hazard reduction	P	P	P	P	P	P	P
Shoreline stabilization	P	P	P	P	P	P	P
INDUSTRIAL (7)							
General	X	X	P (5)	P (8)	P (5)	P (8)	P (5)

<p>P = May be allowed subject to development standards and permitting requirements set forth in this SMP; C = May be allowed as a Shoreline Conditional Use; X = the use or activity is prohibited in shoreline jurisdiction. This table is a summary. Individual notes modify standards in this table. Detailed use standards are found in the text of the SMP. Permitted or conditional uses listed herein may also require a shoreline substantial development permit and other permits.</p>				
	<u>Shoreline Residential Buffer (1) NonBuffer</u>		<u>Urban Conservancy Buffer(2) NonBuffer</u>	
	<u>High Intensity Buffer(3) NonBuffer</u>		<u>Aquatic Environment</u>	
Animal rendering	X	X	X	X
Cement manufacturing	X	X	X	X
Hazardous substance processing and handling & hazardous waste treatment and storage facilities (on or off-site) (6)	X	X	X	X
Rock crushing, asphalt or concrete batching or mixing, stone cutting, brick manufacture, marble works, and the assembly of products from the above materials	X	X	X	X
Salvage and wrecking operations	X	X	X	X
Tow-truck operations, subject to all additional State and local regulations	X	X	X	X
Truck terminals	X	X	X	X
Water-oriented uses	X	X	X	P
MINING				
General	X	X	X	X
Dredging	X	X	X	C
PARKING - ACCESSORY				
Parking areas limited to the minimum necessary to support permitted or conditional uses	X	P	P	P
RECREATION				
Recreation facilities (commercial – indoor)	X	X	P	P (11)
Recreation facilities (commercial – outdoor)	X	X	C	X
Recreation facilities, including boat launching (public)	P(1)	P	C	P (5)
RESIDENTIAL – SINGLE FAMILY/MULTI-FAMILY				

<u>P = May be allowed subject to development standards and permitting requirements set forth in this SMP; C = May be allowed as a Shoreline Conditional Use; X = the use or activity is prohibited in shoreline jurisdiction. This table is a summary. Individual notes modify standards in this table. Detailed use standards are found in the text of the SMP. Permitted or conditional uses listed herein may also require a shoreline substantial development permit and other permits.</u>							
	<u>Shoreline Residential Buffer (1)</u>		<u>Urban Conservancy Buffer(2)</u>		<u>High Intensity Buffer(3)</u>		<u>Aquatic Environment</u>
		<u>NonBuffer</u>		<u>NonBuffer</u>		<u>NonBuffer</u>	
Dwelling	X(10)	P	X	P	X	X	X
Houseboats	X	X	X	X	X	X	X
TRANSPORTATION							
General	C	C	C	C	C	C	C(5)
Park & ride lots	X	X	X	C(9)	X	C(9)	X
UTILITIES							
General (9)	C	P	C	P	C	P	C
Hydroelectric and private utility power generating plants	X	X	X	X	X	X	X

1. Additional permitted uses found at Section 8.4.A are allowed in the buffer.
2. Additional permitted uses found at Section 8.5.A are allowed in the buffer.
3. Additional permitted uses found at Section 8.6.A are allowed in the buffer.
4. Commercial uses mean those uses that are involved in wholesale, retail, service and business trade. Examples include office, restaurants, brew pubs, medical, dental and veterinary clinics, hotels, retail sales, hotel/motels, and warehousing.
5. Permitted only if water dependent.
6. Subject to compliance with state siting criteria RCW Chapter 70.105 (See also Environmental Regulations, Section 10, SMP).
7. Industrial uses mean those uses that are facilities for manufacturing, processing, assembling and/or storing of finished or semi-finished goods with supportive office and commercial uses. Examples include manufacturing processing and/or assembling such items as electrical or mechanical equipment, previously manufactured metals, chemicals, light metals, plastics, solvents, soaps, wood, machines, food, pharmaceuticals, previously prepared materials; warehousing and wholesale distribution; sales and rental of heavy machinery and equipment; and internet data centers.
8. Nonwater-oriented uses may be allowed as a permitted use where the City determines that water-dependent or water-enjoyment use of the shoreline is not feasible due to the configuration of the shoreline and water body.

9. Allowed in shoreline jurisdiction when it is demonstrated that there is no feasible alternative to locating the use within shoreline jurisdiction.
10. Additional development may be allowed consistent with Section 14.5.B.6. A shoreline conditional use permit is required for water oriented accessory structures that exceed the height limits of the Shoreline Residential environment.
11. Limited to athletic or health clubs.
12. Permitted only if water oriented.

8.42 Shoreline Residential Environment --Uses

A. Shoreline Residential Buffer – Permitted Uses

The Shoreline Residential River Buffer shall consist of the area identified in the Shoreline Environment Designation Section of the SMP and the uses shall meet the purposes and criteria established therein.

1. Permitted Uses: No uses or structures are permitted in the Shoreline Residential Buffer except for the following:
 - a. Shoreline Restoration Projects;
 - b. Over-water structures subject to the standards in the Over-water Structures section associated with water-dependent uses, public access, recreation, flood control or channel management. Private, single residence piers for the sole use of the property owner shall not be considered an outright use on the shoreline. A dock may be allowed when the applicant has demonstrated a need for moorage and that the following alternatives have been investigated and are not available or feasible:
 - 1). commercial or marina moorage;
 - 2). floating moorage buoys;
 - 3). joint use moorage pier/dock.
 - c. Public parks, recreation and open space;
 - d. Public pedestrian bridges
 - e. Public and/or private promenades, footpaths or trails;
 - f. Recreation structures such as benches, tables, viewpoints, and picnic shelters, provided no such structure shall exceed 15 feet in height or 25 square feet in area or block views to the shoreline from adjacent properties;
 - g. Signs conforming to ~~sign code~~ Section 9.13 of this SMP;
 - h. Maintenance or redevelopment of levees for flood control purposes, provided they are designed to meet the applicable levee regulations of this SMP
 - i. Vehicle bridges, only if connecting public rights-of-way;
 - j. Utility towers and utilities except the provision, distribution, collection, transmission or disposal of refuse;
 - k. Fire lanes when co-located with levee maintenance roads;
 - l. New shoreline stabilization utilizing the development standards in the Shoreline Stabilization section of this SMP.
 - m. Water dependent uses and their structures, as long as there is no net loss of shoreline ecological function;
 - n. Fences, provided the maximum height of a fence along the shoreline is four feet and the fence does not extend waterward beyond the top of the bank; chain link fences must be vinyl coated.

- o. Existing essential streets, roads and rights of way may be maintained or improved;
 - p. Outdoor storage, only in conjunction with a water dependent use.
 - q. Support facilities for above or below ground utilities or pollution control, such as ~~runoff ponds, filter systems, detention ponds and~~ outfall facilities or other facilities that must have a physical connection to the shoreline to provide their support function, provided they are located at or below grade and as far from the OHWM as technically feasible;
 - r. Water oriented essential public facilities, both above and below ground; and
 - s. Non-water oriented essential public facilities, both above and below ground, provided that it has been documented that no feasible location is available outside of the buffer.
 - t. Landfill as part of an approved remediation plan for the purpose of capping contaminated sediments.
 - u. Patios, or decks not exceeding 18-inches in height, limited to a maximum 200 square feet and 50% of the width of the river frontage. Decks or patios must be located landward of the top of the bank and be constructed to be pervious and of environmentally friendly materials. If a deck or patio will have an environmental impact in the shoreline buffer, then commensurate mitigation shall be required.
2. Conditional Uses: Only the following may be allowed as a Conditional Use in the Shoreline Residential buffer subject to the requirements, procedures and conditions established by this program:
- a. Dredging activities when in compliance with all federal and state regulations, when necessary for navigation or remediation of contaminated sediments.
 - b. Dredging for navigational purposes is permitted where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. Maintenance dredging of established navigation channels and basins is restricted to maintaining previously dredged and/or existing authorized location, depth and width. Dredging of bottom materials for the purpose of obtaining fill material is prohibited.
 - c. New private vehicle bridges.

B. Shoreline Residential Environment -- Uses

The Shoreline Residential Environment shall consist of the remaining area within the 200 foot shoreline jurisdiction that is not within the Shoreline Residential River Buffer. Uses shall meet the purposes and criteria of the ~~Shoreline Residential Development Zone as established in the~~ Shoreline Environment Designation section.

1. Permitted Uses: The Shoreline Residential Environment shall contain residential, recreational and limited commercial uses and accessory uses as allowed in the use

matrix. In addition, the Shoreline Residential Environment shall allow the following uses:

- a. All uses permitted in the Shoreline Residential River Buffer;
 - b. For non-residential uses, parking/loading and storage facilities located to the most upland portion of the property and adequately screened and/or landscaped in accordance with the Vegetation Protection and Landscaping section;
 - c. Railroad tracks; and
 - d. Public or private roads.
2. Conditional uses: All uses listed as conditional uses subject to the requirements, procedures and conditions established by this program.

8.53 Urban Conservancy Environment -- Uses

The Urban Conservancy Environment shall consist of the areas identified in the Shoreline Environment Designations sections of this SMP. Uses shall meet the purposes and criteria of the Urban Conservancy Environment established therein.

A. Urban Conservancy Environment Buffer – Uses

1. Permitted uses: The following uses are permitted in the Urban Conservancy River Buffer:
 - a. Shoreline Restoration Projects.
 - b. Over-water structures subject to the standards established in the Over-water Structures Section that are associated with water-dependent uses, public access, recreation, flood control, channel management or ecological restoration;
 - c. Public parks, recreation and open space
 - d. Public and/or private promenades, footpaths or trails;
 - e. Public pedestrian bridges;
 - f. Recreation structures such as benches, tables, viewpoints, and picnic shelters, provided no such structure shall exceed 15 feet in height and 25 square feet in area and views of the shoreline are not blocked from adjacent properties;
 - g. Signs conforming to ~~sign code~~ Section 9.13 of this SMP;
 - h. Maintenance or redevelopment of levees for flood control purposes, provided that any redevelopment of a levee shall meet the applicable levee regulations of this SMP;
 - i. New vehicle bridges: permitted only if connecting public rights-of-way; existing public or private vehicle bridges may be maintained or replaced.
 - j. Utility towers and utilities except the provision, distribution, collection, transmission or disposal of refuse;
 - k. Levee maintenance roads;

- l. Plaza connectors between buildings and levees, not exceeding the height of the levee, are permitted for the purpose of providing and enhancing pedestrian access along the river and for landscaping purposes.
 - m. New shoreline stabilization utilizing the development standards in the Shoreline Stabilization Section.
 - n. Existing essential streets, roads and rights of way may be maintained or improved.
 - o. Water dependent commercial and industrial development, if permitted by the underlying zoning district;
 - p. Regional detention facilities that meet the City's Infrastructure Design and Construction Standards along with their supporting elements such as ponds, piping, filter systems and outfalls vested as of the effective date of this program or if no feasible alternative location exists.
 - q. Support facilities for above or below ground utilities or pollution control, such as ~~runoff ponds, filter systems, detention ponds and~~ outfall facilities or other facilities that must have a physical connection to the shoreline to provide their support function, provided they are located at or below grade and as far from the OHWM as technically feasible;
 - r. Outdoor storage, only in conjunction with a water dependent use.
 - s. Water oriented essential public facilities, both above and below ground.
 - t. Non-water oriented essential public facilities, both above and below ground, provided that it has been documented that no feasible location is available outside of the buffer.
 - u. Landfill as part of an approved remediation plan for the purpose of capping contaminated sediments.
2. Conditional Uses: Only the following may be allowed as a Conditional Use in the Shoreline Urban Conservancy Environment buffer subject to the requirements, procedures and conditions established by this program:
- a. Dredging activities where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided;
 - b. Dredging for remediation of contaminated sediments when mitigation is provided. Dredging of bottom materials for the purpose of obtaining fill material is prohibited. Dredging activities must comply with all federal and state regulations.
 - c. New private vehicle bridges.

B. Urban Conservancy Environment -- Uses

1. Permitted Uses: All uses permitted in the Urban Conservancy Environment Buffer and/or the shoreline use matrix ~~underlying zoning district~~ may be allowed.

2. Conditional Uses: All uses listed as Conditional Uses may be allowed subject to the requirements, procedures and conditions of this program.

8.64 High Intensity Environment -- Uses

The High Intensity Environment Buffer shall consist of the area identified in the Shoreline Environment Designations section. Uses shall meet the purposes and criteria of established therein.

A. High Intensity Environment Buffer -- Uses

1. Permitted uses: The following uses are permitted in the High Intensity River Buffer:
 - a. Shoreline Restoration Projects.
 - b. Over-water structures subject to the standards established in the Over-water Structures Section that are associated with water-dependent uses, public access, recreation, flood control, channel management or ecological restoration;
 - c. Public parks, recreation and open space;
 - d. Public and/or private promenades, footpaths or trails;
 - e. Public pedestrian bridges;
 - f. Recreation structures such as benches, tables, viewpoints, and picnic shelters, provided no such structure shall exceed 15 feet in height and 25 square feet in area and no views of the shoreline are blocked from adjacent properties;
 - g. Signs conforming to ~~sign code~~ Section 9.13 of this SMP;
 - h. Maintenance or redevelopment of levees for flood control purposes, provided that any redevelopment of a levee shall meet the applicable levee regulations of this SMP;
 - i. New vehicle bridges: permitted only if connecting public rights-of-way; existing public or private vehicle bridges may be maintained or replaced.
 - j. Utility towers and utilities except the provision, distribution, collection, transmission or disposal of refuse;
 - k. Levee maintenance roads;
 - l. Plaza connectors between buildings and levees, not exceeding the height of the levee, are permitted for the purpose of providing and enhancing pedestrian access along the river and for landscaping purposes.
 - m. New shoreline stabilization utilizing the development standards in the Shoreline Stabilization section of this SMP.
 - n. Existing essential streets, roads and rights of way may be maintained or improved.
 - o. Water dependent commercial and industrial development, if permitted by the underlying zoning district;
 - p. Regional detention facilities that meet the City's Infrastructure Design and

Construction Standards along with their supporting elements such as ponds, piping, filter systems and outfalls vested as of the effective date of this program or if no feasible alternative location exists.

- q. Support facilities for above or below ground utilities or pollution control, such as ~~runoff ponds, filter systems, detention ponds and~~ outfall facilities or other facilities that must have a physical connection to the shoreline to provide their support function, provided they are located at or below grade and as far from the OHWM as technically feasible;
 - r. Outdoor storage, only in conjunction with a water dependent use.
 - s. Water oriented essential public facilities, both above and below ground.
 - t. Non-water oriented essential public facilities, both above and below ground, provided that it has been documented that no feasible location is available outside of the buffer.
 - u. Landfill as part of an approved remediation plan for the purpose of capping contaminated sediments.
2. Conditional Uses: ~~Only the~~ The following may be allowed as a Conditional Use in the Shoreline High Intensity Environment buffer subject to the requirements, procedures and conditions of this program.
- a. Dredging activities where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided;
 - b. Dredging for remediation of contaminated sediments when mitigation is provided. Dredging of bottom materials for the purpose of obtaining fill material is prohibited. Dredging activities must comply with all federal and state regulations.
 - c. New private vehicle bridges.

B. Shoreline High Intensity Environment -- Uses

The Shoreline High Intensity Environment shall consist of the remaining area within the 200 foot shoreline jurisdiction that is not within the Shoreline High Intensity Environment Buffer area. Uses shall meet the purposes and criteria of the Shoreline Environment Designations section.

- 1. Permitted Uses: All uses permitted in the High Intensity Environment Buffer and/or the shoreline use matrix ~~underlying zoning district may be allowed.~~
- 2. Conditional Uses: All uses listed as Conditional Uses may be allowed subject to the requirements, procedures and conditions established by this program.

Section 8.7 Aquatic Environment – Uses

The Aquatic Environment consists of all water bodies within the City limits and its potential annexation areas under the jurisdiction of the Shoreline Management Act waterward of the ordinary high water mark. The aquatic environment includes the water surface together with the underlying lands and the water column.

Aquatic Environment – Uses

1. Permitted Uses: The following uses are permitted in the Aquatic Environment. Uses and activities within the Aquatic Environment must be compatible with the adjoining shoreline environment
 - a. Shoreline Restoration Projects.
 - b. Over-water structures subject to the standards established in the Over-water Structures Section that are associated with water-dependent uses, public access, recreation, flood control, channel management or ecological restoration;
 - c. Maintenance or redevelopment of levees for flood control purposes, provided that any redevelopment of a levee shall meet the applicable levee regulations of this SMP;
 - d. New shoreline stabilization utilizing the development standards in the Shoreline Stabilization Section.
 - e. Water dependent commercial and industrial development, if permitted by the underlying zoning district;
 - f. Boats moored at a dock or marina. No boats may be moored on tidelands or in the river channel. No live-aboards permitted.
 - g. Fill for ecological restoration
2. Conditional Uses: Only the following may be allowed as a Conditional Use in the Shoreline Aquatic Environment buffer subject to the requirements, procedures and conditions established by this program:
 - a. Dredging activities where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided;
 - b. Dredging for remediation of contaminated sediments when mitigation is provided. Dredging of bottom materials for the purpose of obtaining fill material is prohibited. Dredging activities must comply with all federal and state regulations.
 - c. Fill minimally necessary to support water dependent uses, public access, or for the alteration or expansion of a transportation facility of statewide significance currently located on the shoreline when it is demonstrated that alternatives to fill are not feasible.

12. Section 9.2.A.9 shall be modified as follows:

Except for bridges, approved above ground utility structures, and water dependent uses and their structures, the maximum height for structures shall be 30 feet. ~~as established by the underlying zone. For bridges, approved above ground utility structures, and water dependent uses and their structures, the height limit shall be as demonstrated necessary to accomplish the structure's primary purpose.~~ Bridges, approved above ground utility structures, and water dependent uses and their structures greater than 35 feet in height require approval of a shoreline conditional use permit.

13. Section 9.3 shall be modified as follows:

9.3 High Intensity, and Urban Conservancy and Aquatic Environment Development Standards

A. Standards

The following standards apply in the High Intensity, ~~and Urban Conservancy~~ and Aquatic Environments.

1. All new development performed by public agencies, or new multi-family, commercial, or industrial development shall provide public access in accordance with the standards in the Public Access Section.
2. Development or re-development of properties in areas of the shoreline armored with revetments or other hard armoring other than levees, or with non-armored river banks must comply with the Vegetation Protection and Landscaping Section.
3. Any new shoreline stabilization or repairs to existing stabilization must comply with Shoreline Stabilization Section.
4. Over-water structures shall be allowed only for water dependent uses and the size limited to the minimum necessary to support the structure's intended use and shall result in no net loss to shoreline ecological function. Overwater structures must comply with the standards in the Overwater Structures Section.

B. Setbacks and Site Configuration

1. The yard setback adjacent to the river is the buffer width established for the applicable shoreline environment.
2. A fishing pier, viewing platform or other outdoor feature that provides access to the shoreline is not required to meet a setback from the OHWM.

C. Height Restrictions

Except for bridges, approved above ground utility structures, and water dependent uses and their structures, the maximum height for structures shall be as follows to preserve visual access to the shoreline and avoid massing of tall buildings within the shoreline jurisdiction:

1. 15 feet where located within the River Buffer;
2. 45 feet between the outside landward edge of the River Buffer and 200' of the OHWM.

Provided, no permit shall be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines. For any building that is proposed in shoreline jurisdiction to be greater than 35 feet in height, the development proponent must demonstrate that the proposed building will not block the views of a substantial number of residences. The Director may approve a 15% increase in height if the project proponent provides substantial additional restoration and/or enhancement of the shoreline buffer, beyond what may otherwise be required. The enhancement and/or restoration is subject to the standards of Section 9.10, Vegetation Protection and Landscaping. If the required buffer has already been restored, the project proponent may provide a 20% wider buffer which has been restored and/or enhanced in order to obtain the 15% increase in height. These incentives may not be combined to achieve a greater than 15% height increase. The enhancement/restoration is subject to the standards of Section 9.10, Vegetation Protection and Landscaping.

D. Lighting

Lighting for the site or development shall be designed and located so that:

1. The minimum light levels in parking areas and paths between the building and street shall be 1 foot-candle;
2. Lighting shall be designed to prevent light spillover and glare on adjacent properties and on the river channel, be directed downward so as to illuminate only the immediate area; and be shielded to eliminate direct off-site illumination;
3. The general grounds need not be lighted;

The lighting is incorporated into a unified

14. Section 9.8.C shall be modified as follows:

C. ~~Where required~~ For all development, mitigation sequencing measures shall be applied in the following ~~sequence of steps listed in~~ order of priority.

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations;
5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
6. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

15. A new Section 9.13 shall be added as follows:

9.13 Signs in Shoreline Jurisdiction

A. Signage within the shoreline buffer is limited to the following:

1. Interpretative Signs;
2. Signs for water related uses;
3. Signs installed by a government agencies for public safety along any public trail or at any public park;
4. Signs installed within the rights of way of any public right of way or bridge within the shoreline buffer. All signs shall meet the requirements of the Manual on Uniform Traffic Control Devices for Streets and Highways, current edition, published by the U.S. Department of Transportation.
5. Signs installed on utilities and Wireless Communication Facilities denoting danger or other safety information, including emergency contact information.

B. The following signs are strictly forbidden the shoreline buffer:

1. Billboards and other off-premise signs.

16. Section 10.6.D shall be modified as follows:

D. Wetlands shall be designated in accordance with the ~~Washington State Wetlands Rating~~

~~System Washington State Wetlands Rating System for Western Washington (Washington State Department of Ecology, August 2004, Publication #04-06-025 Washington Department of Ecology, August 2004, Publication #93-74)~~

as Category I, II, III, or IV as listed below:

1. Category I wetlands are those that a) represent a unique or rare wetland type; or b) are more sensitive to disturbance than most wetlands; or c) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or d) provide a high level of functions. The following types of wetlands listed by Washington Department of Ecology and potentially found in Tukwila's Shoreline Jurisdiction are Category I:
 - a. Estuarine wetlands (Estuarine wetlands are deepwater tidal habitats with a range of fresh-brackish-marine water chemistry and daily tidal cycles, salt and brackish marshes, intertidal mudflats, mangrove swamps, bays, sounds, and coastal rivers.
 - b. Wetlands that perform many functions well and score at least 70 points in the Western Washington Wetlands Rating System.
2. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. Category II wetlands potentially in Tukwila's Shoreline Jurisdiction include:
 - a. Estuarine Wetlands - Any estuarine wetland smaller than an acre, or those that are disturbed and larger than 1 acre are category II wetlands.
 - b. Wetlands That Perform Functions Well - Wetlands scoring between 51-69 points (out of 100) on the questions related to the functions present are Category II wetlands.
3. Category III wetlands have a moderate level of functions (scores between 30 -50 points). Wetlands scoring between 30 -50 points generally have been disturbed in some ways, and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.
4. Category IV wetlands have the lowest levels of functions (scores less than 30 points) and are often heavily disturbed. While these are wetlands that should be able to be replaced or improved, they still need protection because they may provide some important functions. Any disturbance of these wetlands must be considered on a case by case basis.

17. Section 10.9.E shall be modified as follows:

E. Reduction of Standard Buffer Width

Except for the Green/Duwamish River (Type 1 watercourse for which any variation in the buffer shall be regulated under the shoreline provisions of this Program), the buffer width may be reduced on a case-by-case basis, provided the reduced buffer area does not contain slopes 15% or greater. In no case shall the approved buffer width result in greater than a 50% reduction in width. Buffer reduction with enhancement may be allowed as part of a Substantial Development permit if:

1. Additional protection to wetlands or watercourses will be provided through the implementation of a buffer enhancement plan; and
2. The existing condition of the buffer is degraded; and
3. Buffer enhancement includes, but is not limited to the following:
 - a. Planting vegetation that would increase value for fish and wildlife habitat or improve water quality;
 - b. Enhancement of wildlife habitat by incorporating structures that are likely to be used by wildlife, including wood duck boxes, bat boxes, snags, root wads/stumps, birdhouses and heron nesting areas; or
 - c. Removing non-native plant species and noxious weeds from the buffer area and replanting the area.

18. Section 10.11 shall be modified as follows:

10.11 Sensitive Areas Permitted Uses and Alterations.

A. General Sensitive Areas Permitted Uses

1. All uses permitted in the Shoreline Jurisdiction Buffers are allowed in sensitive area buffers within the jurisdiction except:
 - a. Promenades
 - b. Recreational structures
 - c. Public pedestrian bridges
 - d. Vehicle bridges
 - e. New utilities
 - f. Plaza connectors
 - g. Water dependent uses and their structures
 - h. Essential streets, roads and rights of way
 - i. Essential public facilities
 - j. Outdoor storage
2. In addition, the following uses are allowed:
 - a. Maintenance activities of existing landscaping and gardens in a sensitive area buffer including but not limited to mowing lawns, weeding, harvesting and replanting of garden crops and pruning and planting of vegetation. The

removal of established native trees and shrubs is not permitted. Herbicide use in sensitive areas or their buffers is not allowed without written permission of the City.

- b. Vegetation maintenance as part of sensitive area enhancement, creation or restoration. Herbicide use in sensitive areas or their buffers is not allowed without written permission of the City.

B. Uses Requiring a Type II permit

- ~~1. Maintenance and repair of existing uses and facilities where alteration or additional fill materials will be placed or heavy construction equipment used.~~
- ~~2. Construction of new essential streets and roads, rights of way and utilities.~~
- ~~3. New surface water discharges to sensitive areas or their buffers from detention facilities, pre-settlement ponds or other surface water management structures may be allowed provided that the discharge meets the clean water standards of RCW 90.48 and WAC 173.200 and 173.201 as amended, and does not adversely affect water level fluctuations in the wetland or adversely affect watercourse habitat and watercourse flow conditions relative to the existing rate.~~
4. Plaza connectors
5. Essential public facilities
6. Overwater structures
7. Recreation structures

BC. Conditional Uses

Dredging, where necessary to remediate contaminated sediments, if adverse impacts are mitigated.

CD. Wetland Alterations.

Alterations to wetlands are discouraged, are limited to the minimum necessary for project feasibility, and must have an approved mitigation plan developed in accordance with the standards in this chapter.

1. Mitigation for wetlands shall follow the mitigation sequencing steps in this chapter and may include the following types of actions:
 - a. Creation - the manipulation of the physical, chemical or biological characteristics to develop a wetland on an upland or deepwater site, where a biological wetland did not previously exist;
 - b. Re-establishment - the manipulation of the physical, chemical or biological characteristics of a site with the goal of restoring wetland functions to a former wetland, resulting in a net increase in wetland acres and functions;
 - c. Rehabilitation - the manipulation of the physical, chemical, or biological

- characteristics with the goal of repairing historic functions and processes of a degraded wetland, resulting in a gain in wetland function but not acreage;
- d. Enhancement - the manipulation of the physical, chemical or biological characteristics to heighten, intensify, or improve specific functions (such as vegetation) or to change the growth stage or composition of the vegetation present, resulting in a change in wetland functions but not in a gain in wetland acreage; or
 - e. A combination of the three types.
2. Allowed alterations per wetland type and mitigation ratios are as follows:
- a. Alterations are not permitted to Category I wetlands unless specifically exempted under the provisions of this Program. Mitigation will still be required at a rate of 4:1 for creation or re-establishment, 8:1 for rehabilitation, and 16:1 for enhancement.
 - ba. Alterations are not permitted to Category I or II wetlands unless specifically exempted under the provisions of this Program. Mitigation will still be required at a rate of 3:1 for creation or re-establishment, 6:1 for rehabilitation, and 12:1 for enhancement.
 - cb. Alterations to Category III wetlands are prohibited except where the location or configuration of the wetland provides practical difficulties that can be resolved by modifying up to .10 (one-tenth) of an acre of wetland. Mitigation for any alteration to a Category III wetland must be located contiguous to the altered wetland. Mitigation for any alteration to a Category III wetland must be provided at a ratio of 2:1 for creation or re-establishment, 4:1 for rehabilitation and 8:1 for enhancement alone.
 - de. Alterations to Category IV wetlands are allowed, where unavoidable and adequate mitigation is carried out in accordance with the standards of this section. Mitigation for alteration to a Category IV wetland will be 1.5:1 for creation or re-establishment and 3:1 for rehabilitation and 6:1 for enhancement.
 - ed. Isolated wetlands formed on fill material in highly disturbed environmental conditions and assessed as having low overall wetland functions (scoring below 20 points) may be altered and/or relocated with the permission of the Director. These wetlands may include artificial hydrology or wetlands unintentionally created as the result of construction activities. The determination that a wetland is isolated is made by the US Army Corps of Engineers.

DE. Watercourse Alterations

All impacts to a watercourse that degrade the functions and values of the watercourse shall be

avoided. If alternation to the watercourse is unavoidable, all adverse impacts shall be mitigated in accordance with the approved mitigation plan as described in this chapter. Mitigation shall take place on-site or as close as possible to the impact location, and compensation shall be at a minimum 1:1 ratio. Any mitigation shall result in improved watercourse functions over existing conditions.

1. Diverting or rerouting may only occur with the permission of the Director and an approved mitigation plan as well as all necessary approvals by state agencies. Any watercourse that has critical wildlife habitat or is necessary for the life cycle or spawning of salmonids, shall not be rerouted, unless it can be shown that the habitat will be improved for the benefit of the species. A watercourse may be rerouted or day-lighted as a mitigation measure to improve watercourse function.
2. Piping of any watercourse should be avoided. Relocation of a watercourse is preferred to piping; if piping occurs in a watercourse sensitive area, it shall be limited and shall require approval of the Director. Piping of Type 1 watercourses shall not be permitted. Piping may be allowed in Type 2, 3 or 4 watercourses if it is necessary for access purposes. Piping may be allowed in Type 4 watercourses if the watercourse has a degraded buffer, is located in a highly developed area and does not provide shade, temperature control etc. for habitat. The applicant must comply with the conditions of this section, including: providing excess capacity to meet needs of the system during a 100-year flood event; and providing flow restrictors, and complying with water quality and existing habitat enhancement procedures.
3. No process that requires maintenance on a regular basis will be acceptable unless this maintenance process is part of the regular and normal facilities maintenance process or unless the applicant can show funding for this maintenance is ensured for as long as the use remains.
4. Piping projects shall be performed pursuant to the following applicable standards:
 - a. The conveyance system shall be designed to comply with the standards in current use and recommended by the Department of Public Works.
 - b. Where allowed, piping shall be limited to the shortest length possible as determined by the Director to allow access onto a property.
 - c. Where water is piped for an access point, those driveways or entrances shall be consolidated to serve multiple properties where possible, and to minimize the length of piping.
 - d. When required by the Director, watercourses under drivable surfaces shall be contained in an arch culvert using oversize or super span culverts for rebuilding of a streambed. These shall be provided with check dams to reduce flows, and shall be replanted and enhanced according to a plan approved by the Director.
 - e. All watercourse crossing shall be designed to accommodate fish passage. Watercourse crossings shall not block fish passage where the streams are fish bearing.
 - f. Storm water runoff shall be detained and infiltrated to preserve the

watercourse channel's dominant discharge.

- g. All construction shall be designed to have the least adverse impact on the watercourse, buffer and surrounding environment.
- h. Piping shall be constructed during periods of low flow, or as allowed by the State Department of Fish and Wildlife.
- i. Water quality must be as good or better for any water exiting the pipe as for the water entering the pipe, and flow must be comparable.

EF. Fish and Wildlife Conservation Area Alterations

Alterations to the Green/Duwamish River are regulated by the shoreline provisions of this SMP. Alterations to Fish and Wildlife Conservation Areas that have been created as restoration or habitat enhancement sites and that are shown on the Sensitive Areas in the Shoreline Jurisdiction Map are prohibited and may only be authorized through a shoreline variance procedure.

19. Section 11.1.A shall be modified as follows:

A. Public access to or along the shoreline as described in Section 11 shall be provided on all property that abuts the Green/Duwamish River shoreline in accordance with this section as further discussed below where any of the following conditions are present.

- 1. Where a development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact.
- 2. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.
- 3. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.
- 4. Where the development is proposed by a public entity or on public lands.
- 5. Where identified on the Shoreline Public Access Map.
- 6. Where a land division of five or greater lots, or a residential project of five or greater residential units is proposed.

For the purposes of this section, an "increase in demand for public access" is determined by evaluating whether the development reflects an increase in the land use intensity, for example

converting a warehouse to office or retail use, or a significant increase in the square footage of an existing building. A significant increase is defined as an increase of 3,000 square feet. The extent of public access required will be proportional to the amount of increase in the demand for public access. For smaller projects, the Director will review the intent of this section and the scope of the project to determine a reasonable amount of public access to be carried out. Depending on the amount of increase, the project may utilize the alternative provisions for meeting public access in Section 11.6.C.

The terms and conditions of Section 11.1 and 11.2 shall be deemed satisfied if the applicant and the City agree upon a master trail plan providing for public paths and trails within a parcel or group of parcels.

20. Section 11.5 shall be modified as follows:

11.5 Public Access Incentives

This section provides allowances for increased maximum height limits for buildings in shoreline jurisdiction when certain public access provisions are provided with shoreline development. Prior to approval of any building greater than 35 feet in height in shoreline jurisdiction, the development proponent must demonstrate that the proposed building will not block the views of a substantial number of residences.

A. The minimum yard setback for buildings, uses, utilities or development from non-riverfront lot lines may be reduced as follows:

1. Where development provides a public access corridor between off-site areas, or public shoreline areas to public shoreline areas, one side yard may be reduced to a zero lot line placement; or
2. Where development provides additional public access area(s) equal in area to at least 2.5% of total building area, the front yard (the landward side of the development) may be reduced by 50 percent.

B. The maximum height for structures may be increased by 15% when:

1. Development devotes at least 5% of its building or land area to public shoreline access; or
2. Development devotes at least 10% of its land area to employee shoreline access.

C. The maximum height for structures may be increased by a maximum of 25% when:

1. One of the criteria under 11.5 B. is met; and
2. The applicant restores or enhances the entire shoreline buffer, including but not limited to paved areas no longer in use on the property to offset the impact of the

increase in height. Buffer restoration/enhancement projects undertaken to meet the requirements at 11.6 C. are not eligible for this incentive.

3. No combination of incentives from 11.5 B, 11.5 C or 9.3 C may be used to gain more than a 25% height increase.

D. The maximum height for structures may be increased ~~to the height permitted in the underlying zoning district~~ for properties that construct a 14' wide paved trail with a two-foot wide shoulder on each side for public access along the river in areas identified for new shoreline trail segments, or where, in the case of properties containing or abutting existing public access trails, the existing trail either meets the standard of a 14 foot wide trail with two foot shoulders on either side or the property owner provides any necessary easements and improvements to upgrade the existing trail to that standard along the property frontage. During the project review, the increased height shall be affirmatively demonstrated to

1. Not block the views of a significant number of residences,
2. Not cause environmental impacts such as, but not limited to, shading of the river buffer or light impacts adversely affecting the river corridor, and
3. Achieve no net loss of ecological function. In no case shall the building height be greater than 115 feet pursuant to this provision.

21. Section 13.1 shall be modified as follows:

13.1 Shoreline Substantial Development Permit Not Required

Shoreline restoration projects shall be allowed without a Shoreline Substantial Development Permit when these projects meet the criteria established by WAC 173-27-040(o) and (p) and RCW 90.58.580 H.B. 2199.

22. Section 13.2 shall be modified as follows:

13.2 Changes in Shoreline Jurisdiction due to Restoration

Relief may be granted from shoreline master program standards and use regulations in cases where shoreline restoration projects result in a change in the location of the OHWM and associated shoreline jurisdiction on the subject property and/or adjacent properties and where application of shoreline master program regulations would preclude or interfere with the uses permitted by the underlying zoning, thus presenting a hardship to the project proponent.

A. Applications for relief, as specified on subsection B below must meet the following criteria:

1. The proposed relief is the minimum necessary to relieve the hardship;
2. After granting the proposed relief, there is net environmental benefit from the

- restoration project; and
3. Granting the proposed relief is consistent with the objectives of the shoreline restoration project and with the shoreline master program.

The Department of Ecology must review and approve applications for relief.

Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under the provisions of this section.

- B. For the portion of property that moves from outside shoreline jurisdiction to inside shoreline jurisdiction as a result of the shoreline restoration project the City may consider the following, consistent with the criteria in A above:

1. ~~may be permitting development~~ for the full range of uses of the underlying zoning consistent with the zoning code, including uses that are not water-oriented;
2. ~~is not required~~ waiving the requirement to obtain a shoreline substantial development permit if it is otherwise exempt from the requirement for a substantial development permit;
3. ~~is not subject to~~ waiving the SMP provisions for public access;
4. ~~may be developed for the full range of uses of the underlying zoning is not subject to~~ waiving the requirement for shoreline design review; and
5. ~~is not subject to~~ waiving the development standards set forth in this Program, except as set forth in Section 13.2 C.

The intent of the exemptions identified in A 1-4 is to implement the restoration projects of the Shoreline Master Program Restoration Plan, which reflect the projects identified in the Water Resource Inventory (WRIA) 9 Plan pursuant to Policy 5.2 of this Master Program. Projects will continue to be added to the Restoration Plan as they are identified.

- C. Consistent with the provisions of subsection A. above, the Shoreline Residential Environment Buffer, High Intensity or Urban Conservancy Environment Buffer width may be reduced to no less than 25 feet measured from the new location of the OHWM for the portion of the property that moves from outside the shoreline jurisdiction to inside shoreline jurisdiction as a result of the shoreline restoration project, subject to the following standards:

1. The 25 foot buffer area must be vegetated according to the requirements of the Vegetation Protection and Landscaping Section or as otherwise approved by the City; and
2. The proponents of the restoration project are responsible for the installation and

maintenance of the vegetation.

- D. The habitat restoration project proponents must record with King County a survey that identifies the location of the OHWM location prior to implementation of the shoreline restoration project, any properties and structures that fall within the shoreline jurisdiction and the new location of the OHWM once construction of the shoreline restoration project is completed and any properties that are brought under shoreline jurisdiction due to the restoration project. As the location of the OHWM is not static, it may be necessary for future projects to re-survey the location of the OHWM.

~~ED.~~ Shoreline restoration projects must obtain all U.S. Army Corps of Engineers and Washington State Department of Fish and Wildlife approvals as well as written approval from the City.

23. Section 14.5.A.4 shall be modified to read:

If a change of use is proposed to a use determined to be non-conforming by application of provisions in this SMP, the proposed new use must be a permitted use in the SMP or a use approved under a Conditional Use Permit process. For purposes of implementing this section, a change of use constitutes a change from one Permitted, Conditional Use category to another such use category as listed within the use matrix zoning code.

24. Section 14.5.B.5 shall be modified as follows:

5. Residential structures ~~and uses~~ located in any Shoreline Residential Environment ~~single family or multiple family residential zoning district~~ and in existence at the time of adoption of this SMP shall not be deemed nonconforming in terms of height, residential use, or location provisions of this title. Such buildings may be rebuilt after a fire or other natural disaster to their original dimensions, location and height, but may not be changed except as provided in the non-conforming uses section of this chapter.

25. Section 14.5.B.6 shall be modified as follows:

6. Single-family structures in the Shoreline Residential Environment ~~single or multiple family residential zone districts~~, which have legally non-conforming setbacks from the OHWM per the SMP buffer, shall be allowed to expand the ground floor only along the existing building line(s), so long as the existing distance from the nearest point of the structure to the OHWM is not reduced, and the square footage of new intrusion into the buffer does not exceed 50% of the square footage of the current intrusion. As a condition of building permit approval a landscape plan showing

removal of invasive plant species within the entire shoreline buffer and replanting with appropriate native species must be submitted to the City. Maintenance of these plantings through the establishment period is recommended.

Attachment C

ATTACHMENT C:
RECOMMENDED CHANGES
FOR PROPOSED COMPREHENSIVE UPDATE OF THE CITY OF TUKWILA
SHORELINE MASTER PROGRAM

March 14, 2011

Changes are represented in bill format: additions are underlined;
deletions are ~~struck through~~
See also Attachment A: Findings and Conclusions for change rationale

1. Modify definition of "substantial development" in Section 3 to read:

"Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor.

2. Add Section 6.12 to read:

Tukwila, in developing and implementing its shoreline master program for shorelines of statewide significance, including the Green /Duwamish River, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or

necessary."

3. Add to Sections 8.2.A.1, 8.3.A.1, 8.4.A.1, and 8.5.A.1 the following:

Fill solely for the purpose of ecological restoration.

4. Add to Sections 8.2.A.2, 8.3.A.2, 8.4.A.2, and 8.5.A.2 the following:

Fill minimally necessary to support water dependent uses, public access, or for the alteration or expansion of a transportation facility of statewide significance currently located on the shoreline when it is demonstrated that alternative to fill are not feasible.

5. Live-aboards may be permitted with both of the following additions to the SMP:

a. Live-aboards shall be a separate use in the Residential category in the Use Matrix. Live-aboards shall be prohibited in all environments except Aquatic. Live-aboards may be permitted in the Aquatic environment.

b. A Section 9.12.E shall be added to read:

New over-water residences are prohibited. Live-aboards may be allowed provided that:

1. They are for single-family use only;
2. They are located in a marina that provides shower and toilet facilities on land and there are no sewage discharges to the water;
3. Live-aboards do not exceed 10 percent of the total slips in the marina;
4. They are owner-occupied vessels; and
5. There are on-shore support services in proximity to the live-aboards.

6. **Modify Table 4 in Section 9.10.B.4 as follows:**

Table 1. Tree Replacement Requirements

Diameter* of Tree Removed	No. of Replacement Trees Required
4-6 inches (single trunk) 2 inches (any trunk of a multi-trunk tree)	3
Over 6 – 8 inches	4
Over 8 – 20 inches	6
Over 20 inches	8

* measured at height of 4.5 feet from the ground

7. **Modify Section 10.7 to read:**

10.7 Watercourse Designation and Ratings

- A. Watercourse ratings are based on the existing habitat functions and are rated as follows:
1. Type 1 (S) Watercourse: Watercourses inventoried as Shorelines of the State, under RCW 90.58 (Green/Duwamish River).
 2. Type 2 (F) Watercourse: Those watercourses that have either perennial (year-round) or intermittent flows and support salmonid fish use.
 3. Type 3 (NP) Watercourse: Those watercourses that have perennial flows and are not used by salmonid fish.
 4. Type 4 (NS) Watercourse: Those watercourses that have intermittent flows and are not used by salmonid fish.
- B. Watercourse sensitive area studies shall be performed by a qualified professional (hydrologist, geologist, engineer or other scientist with experience in preparing watercourse assessments).

8. Modify Section 10.9.A.1 as follows:

10.9 Wetland Watercourse, and Fish and Wildlife Habitat Conservation Area Buffers

A. Purpose and Intent of Buffer Establishment

1. A buffer area shall be established adjacent to designated sensitive areas. The purpose of the buffer area shall be to protect the integrity, functions and values of the sensitive areas. Any land alteration must be located out of the buffer areas as required by this section while acknowledging nonconforming uses and structures as allowed by Section 14.5 of this SMP.

9. Modify Section 10.9.C.2 as follows:

2. Watercourse buffers (measured from the Ordinary High Water Mark):
 - a. Type 1 (S) Watercourse: The buffer width for the Green/Duwamish River is established in the Shoreline Environment Designations of this SMP for the three designated shoreline environments.
 - b. Type 2 (F) Watercourse: 100-foot-wide buffer.
 - c. Type 3 (NP) Watercourse: 80-foot-wide buffer.
 - d. Type 4 (NS) Watercourse: 50-foot-wide buffer.

10. Add to Section 14:

The City will track all land use and development, including exemptions, within the shoreline jurisdiction. A report will be assembled that provides basic project information, including location, permit type issued, project description, impacts, mitigation (if any), and monitoring outcomes as appropriate. Examples of data categories might include square feet of non-native vegetation removed, square feet of native vegetation planted or maintained, reductions in chemical usage to maintain turf, linear feet of eroding stream bank stabilized through plantings, linear feet of shoreline armoring removed or modified levees, or number of fish passage barriers corrected. The report would also update the status of implementation of restoration projects. The staff report would be presented along with any Comprehensive Plan amendments during the yearly review cycle. The report would be used to determine whether implementation of the SMP is meeting the

basic goal of no net loss of ecological functions relative to the baseline conditions established in the Inventory and Characterization Report. Based on the results of the annual assessment, SMP amendments may be necessary.

11. Add to Section 14.2:

C. A substantial development permit shall be granted only when the development proposed is consistent with:

1. The policies and procedures of the Shoreline Management Act;
2. The provisions of Chapter 173-27, WAC; and
3. This shoreline master program.

12. Section 14.2.B shall be modified as follows:

14.2 Substantial Development Permit Requirements

A. Permit Application Procedures

Applicants for a Shoreline Substantial Development Permit shall comply with permit application procedures.

B. Exemptions

1. To qualify for an exemption, the proposed use, activity or development must meet the requirements for an exemption as described in WAC 173-27-040, except for properties that meet the requirements of the Shoreline Restoration Section. The purpose of a shoreline exemption is to provide a process for uses and activities which do not trigger the need for a substantial development permit, but require compliance with all provisions of the City's SMP.
2. The Director may impose conditions to the approval of exempted developments and / or uses as necessary to assure compliance of the project

with the SMA and the Tukwila SMP, per WAC 173-27-040(e). For example, in the case of development subject to a building permit, but exempt from the shoreline permit process, the Building Official or other permit authorizing official, through consultation with the Director, may attach shoreline management terms and conditions to Building Permits and other permit approvals pursuant to RCW 90.58.140.

3. A written exemption shall be required to be sent to the applicant and to the Department of Ecology if:

a. The activity is located in a sensitive area or sensitive area buffer;

b. A U.S. Army Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899 is required; or

c. A section 404 permit under the Federal Water Pollution Control Act of 1972 is required.

Attachment D

**Attachment D:
Responsiveness Summary for Public Comments
City of Tukwila SMP Update
February 16, 2011**

The Department of Ecology (Ecology) held an open comment period on Tukwila's Shoreline Master Program (SMP) update from September 15, 2010 through October 15, 2010. Testimony was provided by two parties at the public hearing on September 29, 2010 and nine written comment letters submitted during the comment period. This includes one party that both testified at the public hearing and provided written comments.

In a letter dated November 2, 2010, Ecology summarized the key issues from all the public comments received. The City then responded to the summarized comments in a letter dated December 10, 2010. This document is a compilation of the Ecology comment summary, City Response, and Ecology Conclusion.

1. William B. Toon at the public hearing on September 29, 2010.

The complete comment states "I am 100 percent against 100 percent of the plan." No additional detail is provided.

City Response: Comment noted.

Ecology Conclusion: Ecology concurs with the City response.

2. Lara Fowler, law firm of Gordon Thomas Honeywell representing Baker Commodities at the public hearing on September 29, 2010 and in a written comment received during the comment period.

Baker Commodities owns a property that is surrounded by the Green River on three sides and railroad tracks on the fourth side. The Baker Commodities site contains 2,200 lineal feet of Green River shoreline. The property is used for an industrial use (rendering). Baker Commodities settled litigation with the City of Tukwila in the 1990's. Some elements of the settlement have been codified in the Tukwila Municipal Code. Baker Commodities expresses concern that the Shoreline Master Program has a significant impact on the Baker Commodities property, as follows:

- a. The settlement agreement allows for the uses currently existing on the property to continue as an unclassified use. Structures associated with these uses can be maintained. According to Baker, the settlement agreement also mandated no requirement for public access, with no exceptions.

City Response: The ordinance implementing the SMP and the SMP itself acknowledges the settlement agreement between the City and Baker Commodities, by referencing TMC 18.66.120, the section of the Zoning Code that incorporates key provisions of the settlement agreement regarding nonconforming uses.

Section 11, Public Access, of the SMP provides for exemptions from the requirement to provide on-site public access. The potential application of these exemptions to any new development or redevelopment proposal will be evaluated at the time the proposal is received, based on the particular circumstances of the proposal, applicable law, and other legal requirements (such as the settlement agreement) in effect at the time of the proposal.

In addition, contrary to Baker Commodities' representation, the settlement agreement does not foreclose for all time the imposition of public access requirements on redevelopment of Baker's property. The agreement merely contains the City's acknowledgement that, at the time of execution of the settlement agreement in 1996, "there is no legal basis on which the City could impose a condition on any permit for expansion or redevelopment of the rendering plant that would require Baker to construct, dedicate or otherwise provide a public access trail or other form of public access across the property on which Baker operates its rendering facility." As the quoted language indicates, this settlement agreement provision applies to Baker's use of the property for operation or expansion of a rendering facility, and not to redevelopment proposals involving other uses. Further, the settlement agreement speaks to the law in effect at the time of the settlement agreement, and does not take into account changes in the law since that time, e.g., *Citizens for Rational Shoreline Planning v. Whatcom County*, 155 Wn.App. 937 (Div. I 2010) (RCW 82.02.020 does not apply to adoption of shoreline master programs).

Ecology Conclusion: The Department of Ecology was not a party to the settlement. Ecology is bound by the requirements of the Shoreline Management Act. Ecology and the City must establish standards for public access in the SMP. The zoning classification of uses on the property remains unaffected by the adoption of the SMP. While the settlement language can be read to mostly preclude public access on the site, the settlement cannot impair the application of an ordinance adopted pursuant to the SMA. While public access must respect public safety, ecological function, and must be roughly proportional to the demand created, it cannot be prohibited by a prior legal agreement in a manner contrary to the SMA.

b. According to Baker, the SMP will increase shoreline buffers on the Baker Commodities site from 40 feet to 100 feet, and render at least three structures on the site nonconforming. The SMP will also change the line from which the buffer is measured from the mean high water line to the ordinary high water mark. Baker's comment letter also argues that these changes are a taking of private property or a

violation of substantive due process, and that the 100 foot buffer prevents any new development on more than 20 percent of the Baker Commodities property.

City Response: The SMA dictates using the Ordinary High Water Mark rather than the mean high water mark as the starting point for measuring shoreline jurisdiction. Section 14.6 of the SMP addresses nonconforming uses and structures and permits their continued use and provides guidance on repair, maintenance and upgrading of nonconforming structures. These would apply to Baker's property, assuming that the structures about which Baker writes were lawfully in place at the time the original SMP was approved in 1974. Regarding existing structures becoming nonconforming due to the new buffer width, City maps indicate two of Baker's structures within the existing shoreline designation (River Environment) are already within 40 feet of the OHWM, which makes these structures nonconforming under the City's current SMP. (The remaining structure lies outside the 100 foot buffer but within the 200 foot shoreline jurisdiction, which likely does not trigger nonconforming issues.) And, the River Environment is the current SMP's most restrictive designation in terms of permitted uses; it is similar to the restrictions that will apply in the shoreline buffer under the new SMP.

The SMP provides this explanation of how buffer widths were determined:

"The determination of the buffer distances for each shoreline environment was based on several factors including the analysis of buffer functions needed for protecting and restoring shoreline ecological function (as presented in the Shoreline Inventory and Characterization Report) and the need to allow space for bank stability and for protecting human life and structures from damage from high flows, erosion and bank failures. Safety of residents and people who work in buildings along the shoreline has become even more important in recent years due to the increase in stormwater entering the river from increasing impervious surfaces throughout the watershed and the recent problems with the Howard Hanson Dam, which preclude being able to store as much flood water behind the dam in the winter until the dam is repaired, and increasing the frequency and intensity of flows during high rain events. These higher and more frequent flows will put more stress on over-steepened banks all along the river, increasing the possibility of bank erosion, levee failures, and bank failures. Thus, ensuring that new structures are not built too close to the river's edge is crucial to avoid loss of human life.

"Staff also reviewed the rationale for the buffer widths established for watercourses under TMC 18.45, the Sensitive Areas Ordinance, as well as buffer widths recommended by resource agencies, such as the State Department of Fish and Wildlife, Department of Natural Resources and the recent Biological Opinion issued by National Marine Fisheries Service in relation to FEMA's National Flood Insurance Program.

“The final buffer widths proposed by staff for each shoreline environment attempted to balance shoreline ecological function needs, human life and property protection needs (including future levee repair/reconstruction), existing land use patterns, and state and federal agency policies.”

The proposed SMP amendments do not constitute a taking of Baker Commodities property. Baker’s letter acknowledges that the new regulations do not prevent development on all of its property, only 20%. Therefore, the SMP amendments cannot be said to deprive Baker of all economically viable use of its property. And, while Baker claims that the proposed SMP amendments would be “detrimental to the economic use” of its property, it is well-established that a city may adopt new regulations that restrict use and thereby diminish the economic value of property, but such regulations are not a taking. See, e.g., *Agins v. City of Tiburon*, 447 U.S. 255, 262-63 (1980). Finally, the SMP amendments do not violate Baker’s right to substantive due process; Baker has neither alleged nor demonstrated that the SMP amendments are not aimed at a legitimate public purpose, that they use unreasonable means, or that their effect would be unreasonably oppressive on Baker, as required by applicable Washington appellate precedent. See, e.g., *Guimont v. Clarke*, 121 Wn.2d 586, 609 (1993).

Ecology Conclusion: The Department of Ecology was not party to the settlement. Ecology is bound by the requirements of the Shoreline Management Act. Ecology and the City must establish standards for shoreline buffers in the SMP.

As noted by the City response, the ordinary high water mark is the required starting point for measuring the 200 foot shoreline jurisdiction.

While the buffers in the updated SMP may be larger than similar protections in the old Tukwila SMP, the updated SMP must propose buffers adequate to protect ecological functions as well as public safety, even though it may render some buildings nonconforming.

c. The vegetation and landscape requirements are problematic. Removal of invasive vegetation and planting of vegetation is required in Section 9.10 of the SMP. This will disproportionately affect the Baker Commodities site.

City Response: The vegetation and landscaping provisions of the SMP will be applied in proportion to the amount of work taking place in the shoreline jurisdiction for smaller projects; new development on a vacant parcel or full redevelopment of a site require landscaping on the entire site, as detailed in Section 9.10 C.1 a., which states:

- a. The landscaping requirements of this subsection apply for any new development or redevelopment in the Shoreline Jurisdiction, except: single family residential development of 4 or fewer lots. The extent of landscaping

required will depend on the size of the proposed project. New development or full redevelopment of a site will require landscaping of the entire site. For smaller projects, the Director will review the intent of this section and the scope of the project to determine a reasonable amount of landscaping to be carried out.

Ecology Conclusion: Ecology concurs with the City response.

3. Andy Padvorac, Puget Sound Energy, written comment received during the comment period.

A Puget Sound Energy (PSE) 230 KV overhead transmission line passes through the shoreline area just north of Interstate 405. Vegetation maintenance is a necessary part of the operation of electric transmission lines.

PSE recognizes the importance of maintaining vegetation within the shoreline environment. PSE has previously discussed with the City its intention to work cooperatively in this matter. PSE is preparing to submit permit applications to the City for a comprehensive vegetation maintenance plan along its 230 KV power lines. An important element of the proposed plan will be consistency and predictability. As PSE begins the process of developing this plan, it is hoped that the City can clarify the SMP regulations.

PSE identifies several areas of concern:

- a. Modify subsections 9.10.B. to clarify that vegetation being too close to overhead power lines is a hazard.

City Response: The Zoning Code defines a hazardous tree as:

“...a tree with a structural defect or disease, or which impedes safe vision or traffic flow, or otherwise currently poses a threat to life or property.”

We believe this definition provides sufficient guidance on what constitutes a hazardous tree. In addition, Section 9.10 D.1. allows trees and shrubs to be pruned “...for safety....to maintain clearance for utility lines...Topping of trees is prohibited except where absolutely necessary to avoid interference with utility lines.” The City believes this also provides the guidance necessary to permit removal of hazardous plant material without being overly broad.

Ecology Conclusion: Ecology concurs with the City response. In addition to Section 9.10.D.1 cited by the City, Section 9.10.B.1 allows for removal of trees that present an imminent hazard to existing structures or the public.

b. Add new subsection to encourage utilities and the City to work together to develop stable plant communities underneath overhead power lines, the plants being species that will mature at low enough heights so as to not create hazards.

City Response: We do not believe additional language is needed in the SMP to encourage discussions on identifying appropriate vegetation under utility lines – the City's policy is to work with all applicants for permits to resolve issues on which the parties disagree. The City is currently working with PSE to resolve issues related to vegetation under power lines that fall within the shoreline jurisdiction on a mitigation site. The SMP also includes language that directs the use of native groundcover, grasses or other low-growing plants as the appropriate type of material to use under utility easements, to prevent future conflicts.

Ecology Conclusion: Ecology concurs with the City response. While the SMA does not require specific language encouraging the City and utilities to work together, Ecology believes that it will be beneficial to all parties to work towards agreed upon solutions.

c. Clarify dimensions in Table 4 in section 9.10.B.4.

City Response: Do not understand what is unclear in Table 4 dimensions.

Ecology Conclusion: PSE suggests minor changes to make Table 4 more readable. Ecology does not believe that the changes are necessary to bring the SMP into compliance with the SMA, however PSE has proposed what can be reasonable suggested changes to the SMP.

d. Measure tree diameter at 4.5 feet.

City Response: This is a typographical error that will be corrected.

Ecology Conclusion: PSE suggests a minor change to make Table 4 consistent with a standard practice. Ecology does not believe that the change is necessary to bring the SMP into compliance with the SMA, however PSE has proposed what can be reasonable suggested changes to the SMP.

e. PSE suggests that topping some trees at a reasonable height, like willows at 15 feet, is not as detrimental as removal and that therefore the replacement ratio for a topped tree should be less than stated in Table 4 in Section 9.10.B.4.

City Response: The City disagrees with this suggestion. Topping of some trees ultimately leads to their death and also removes a significant amount of canopy that cannot be recovered in a reasonable amount of time. As a result, it is appropriate to

require replacement of these trees at the replacement ratio set forth in Table 4, if not under the utility line, then at a more appropriate location where there will not be conflicts between the use and the plant material.

Ecology Conclusion: The change suggested by PSE is not necessary to bring the SMP into compliance with the SMA.

f. Modify section 9.10.C.1.o.2 to restrict the "mature height" of plantings under overhead power lines, whether landscaping or mitigation, to avoid future hazardous conditions.

City Response: The language in 9.10 C.1.o 2) already anticipates that new plantings under a utility easement will take into account the need for low growing plant material as that section talks about using groundcover, grasses or other low-growing plants. This will reduce future conflicts between trees and utility lines.

Ecology Conclusion: Ecology concurs with the City response.

g. Clarify that that "property owner" can include utility within an easement.

City Response: The City does not agree that this clarification is necessary. There is a legal distinction between a person or entity that owns a piece of property and a person or entity to which an easement has been granted on a piece of property they do not own. We do understand that a utility has an interest in development on properties on which it has an easement. Notice about development proposals are routinely sent to utilities and other interested parties. This notice provides these entities with the opportunity to provide input on issues of concern at the development stage. Utilities are also encouraged to comment on long range planning documents.

Ecology Conclusion: Ecology does not believe that the requested change is necessary for consistency with the SMA.

h. Add in section 9.10.C.1.g that overhead utility power lines should be taken into account during plant selection.

City Response: As noted above under the response to comment 3., Section 9.10 C.1.o. 2). speaks to this issue and provides guidance on the types of vegetation appropriate under utility lines.

Ecology Conclusion: Ecology concurs with the City response.

4. Charles E. Maduell, law firm of Davis Wright Tremaine, representing the Desimone Trusts, written comment received during the comment period.

The Desimone Trusts are concerned about use, development and financial impacts that some of the new provisions in the SMP will have.

Buffers

a. Desimone Trusts are concerned that the 100 foot buffer adjacent to the Green River would make many structures on their properties nonconforming. Maduell believes that the proposed buffer is not justified to achieve no net loss of ecological function or bank stabilization, but rather, this an attempt to set aside land for future flood control structures without having the City purchase privately owned land for this purpose.

City Response: The Desimone Trust parcels are in areas that do not contain levees. The buffer width is not an attempt to set aside land for future flood control structures, as none are planned in these areas. The buffer width of 100 feet is established to provide room for the bank to achieve a more natural slope, to prevent new structures from being located too close to the water as well as to ensure no net loss of ecological functions. The buffer width is also the same as the buffer required adjacent to Type 2 watercourses (watercourses similar to the Green River that have perennial flows and support salmonid fish use) regulated under the City's sensitive area regulations. The SMP provides the following summary of how the buffer widths were determined:

"The determination of buffer widths was based on two important criteria: the need to achieve bank stability and protect structures along the shoreline from damage due to erosion and bank failures and to protect and enhance shoreline ecological function.

"Applying the 200 to 250 foot buffer widths recommended by WDFW and WDNR would not be practical given the developed nature of the shoreline. It was also felt that a buffer less than that already established for Type 2 Watercourses under the City's SAO would not be sufficiently protective of shoreline functions, unless those functions were enhanced through various restoration options. Therefore, 100 feet was established as the starting point for considering buffer widths from the standpoint of shoreline ecological function in each of the Shoreline Environments. Between 100 and 125 feet was the starting point for buffer widths from the standpoint of bank stability and property protection.

"Thus buffers were established taking into account (as explained in the following sections) the characteristics of each Shoreline Environment, needs for protection/restoration of shoreline ecological functions, and needs for stable banks and human life and property protection."

Several of the Desimone Trust properties are small, irregularly shaped parcels developed with structures that are already nonconforming due to the City's current SMP buffer width of 50 feet, although the newly-adopted SMP buffers do increase the degree of nonconformity of some structures located on these parcels.

Ecology Conclusion: Ecology concurs with the City response. The buffer requirements in the SMP are part of a plan to retain the level of riparian vegetation along the Green River.

b. It is also stated that requiring a property owner to re-slope the bank to a slope profile for construction and repair of levees in order to obtain a buffer reduction is unreasonable and unwarranted, both because it is cost-prohibitive and also not reasonably necessary to mitigate the shoreline impacts of proposed development. The comment states that this would unfairly allocate the burden of providing flood control measures and improvements on private property owners.

City Response: As noted above, the buffer width for properties that are not behind King County or Army Corps of Engineers certified levees is meant to provide room for the over-steepened banks to achieve a more natural slope, and thereby provide protection of property and structures adjacent to the river. The SMP's nonconforming use provisions allow continuation of existing, nonconforming uses, and only new development or redevelopment is required to come into compliance with the 100-foot buffer requirements. And, the SMP follows the same approach as the City's sensitive area regulations, with buffer reductions permissible if mitigation is provided. This is a fair and appropriate method of requiring private property owners to develop in a way that protects their properties/structures from river bank failures while also ensuring no net loss of ecological functions.

Ecology Conclusion: The SMP has standard buffer provisions that can be reduced when reducing the levee profile consistent with the SMP. It also should be noted that the SMP has standard buffers for development that would prefer to engage in a more prescriptive design.

c. Maduell states that a 100 foot buffer is not needed to protect shoreline ecological functions or to achieve no net loss of such functions. Maduell believes that imposition of a 100-foot buffer for flood control is inconsistent with the SMA and an unconstitutional taking.

d. The comment letter states that a 50 foot buffer for non-leveed and industrial properties is more than sufficient to protect shoreline ecological functions and ensure no net loss of function.

City Response: Section 7 of the SMP explains the rationale for the adopted buffer widths - the SMP attempts to balance private property rights and the requirements of

the SMA, and is not a taking for reasons explained in the response to Comment 2.b. above.

Ecology Conclusion: Ecology concurs with the City response. Ecology believes that it is the City's intent for the response immediately above to apply to both comments 4c and 4d.

Nonconforming Use and Structure Limitations

e. Concern is expressed that a developed commercial or industrial property will lose its legal, nonconforming status where the pre-existing use of all or a portion of the structure is changed to another use. This is a particular concern when the new buffer standards will make a structure nonconforming. The concern is expressed that this will make it difficult to replace commercial tenants when vacancies occur.

City Response: Swapping out one nonconforming use for another nonconforming is permitted under the provisions of the SMP and implementing regulations, and would therefore not eliminate the nonconforming status

Ecology Conclusion: Ecology concurs with the response. One of the required changes to the SMP will be to require a use matrix. This will minimize the number of distinct use classifications in shoreline jurisdiction, thus reducing the number of uses that "change" for purposes of SMP administration.

f. The letter expresses concern that the only way for a property owner to obtain approval for a change of one nonconforming use to another, involving no exterior alterations to the existing building or impact to shoreline functions and values, is to obtain a permit that would require the property owner to restore and/or enhance the entire shoreline buffer.

City Response: A great deal of discussion occurred during the Planning Commission and Council review of the nonconforming uses and structures section of the SMP. Many revisions were made to this section of the SMP and the final language tries to balance the continuation or trading out of nonconforming uses with the desire to eventually amortize these uses.

Ecology Conclusion: One of the required changes to the SMP will be to require a use matrix. This will minimize the number of distinct use classifications in shoreline jurisdiction, thus reducing the number of uses that "change" for purposes of SMP administration.

g. If a nonconforming use ceases, the right to that nonconforming use will expire after 24 months. Concern is expressed that it can take a commercial landlord more than 24 months to locate a new tenant. While the SMP allows for approval of an extension of time beyond the 24 months, Maduell is concerned that the extension would require the property owner to restore and/or enhance the shoreline buffer. The comment states that this would be cost-prohibitive and a taking. The letter writer encourages Ecology to modify the nonconforming use standards to allow more time to find a commercial tenant and make it easier to locate a new nonconforming use in an existing commercial building.

City Response: The amount of shoreline to be restored in return for extending the time to find a replacement tenant for a nonconforming use will be based on the percentage of the existing building used by the nonconforming use (Section 14.5 C. 3). The 24 month period allowed of right, even without an extension, is substantially more time than allowed for nonconforming uses outside the shoreline, which the Zoning Code limits to six months. And, provisions that require conformance within a specified period of time or, in the alternative, the loss of nonconforming status and consequent phasing out of those uses, are not a taking. See, e.g., *Rhod-A-Zalea and 35th, Inc. v. Snohomish County*, 136 Wn.2d 1, 10-11 (1998) (if ordinance regulating nonconforming use "is otherwise a valid exercise of the town's police powers, the fact that it deprives the property of its most beneficial use does not render it unconstitutional."). Ecology should decline the letter writer's request to modify the SMP to provide more time for location of a replacement commercial tenant. Such a modification would be within the City's discretion, but is unnecessary to address any substantive Shoreline Management Act or other legal requirement.

Ecology Conclusion: The 24 month time period (with potential of an additional 24 month extension) in the Tukwila SMP is a more liberal standard than found in the Ecology nonconforming standards at WAC 173-27-080. One of the required changes to the SMP will be to require a use matrix. This will minimize the number of distinct use classifications in shoreline jurisdiction, thus reducing the number of uses that "change" for purposes of SMP administration.

Vegetation and Landscaping

h. The letter expresses concern that imposing a requirement for installation and maintenance of vegetation and landscaping without consideration of the need for such requirements based on the impacts of development would be inconsistent with the SMA and the Shoreline Guidelines, as well as be a taking.

Maduell asks Ecology to modify the SMP to revise the SMP to require vegetation protection and landscaping to the extent that they are roughly proportional to or

reasonably necessary as a direct result of impacts to shoreline functions and values from the proposed development.

City Response: The vegetation and landscaping requirements are similar to requirements already in place both in the existing SMP as well as Zoning Code requirements for landscaping when property is developed. There is language in Section 9.10 C.1 a. that allows proportional application of the landscaping requirements for projects that are not new development or full redevelopment on a site. Further, the legal tests of "rough proportionality" and "reasonably necessary as a direct result of" proposed development do not apply to the landscaping requirements, because they do not require dedication of real property, and because RCW 82.02.020 is inapplicable to Shoreline Master Programs. See, e.g., *Citizens for Rational Shoreline Planning v. Whatcom County*, 155 Wn.App. 937 (Div. I 2010).

Ecology Conclusion: Ecology concurs with the City's response. Provisions for vegetation conservation are a necessary component of an SMP. Tukwila has devised a locally acceptable method for achieving vegetation conservation. The Tukwila SMP does contain language in Section 9.10.C.1.a that states "for smaller projects, the Director will review the intent of this section and the scope of the project to determine a reasonable amount of landscaping to be carried out." The City has developed a local framework for reestablishing vegetation to address shoreline impairments. The City is correct in noting that RCW 82.02.020 is not applicable to SMPs.

Public Access

i. The letter expresses concern regarding the public access requirements for new or expanded developments over 3,000 square feet. While the letter acknowledges that the SMP contains a provision that allows some relief from some of the public access requirement, concern is expressed that such relief does not appear to extend to the requirement that a property owner upgrade an existing trail along the shoreline regardless of the impacts to public access that a development may have. Maduell states that this is inconsistent with certain provisions of the SMA and the Shoreline Guidelines, and may be a taking. To address the concern, Maduell asks Ecology to modify the SMP to only require public access when the requirements are roughly proportional to or reasonably necessary as a direct result of the impacts from the proposed shoreline development.

City Response: Section 11.1 states the Director will review the scope of a project to determine a reasonable amount of public access to be carried out and that depending on the amount of increase in demand for public access, the alternative provisions in Section 11.6 C. may be utilized. These provisions would apply to a project on a site that abuts the trail or is located in an area where no trail is located or anticipated. For additional response, see responses to Comments 2.b and 4.h above.

Ecology Conclusion: Section 11.6.A.3 of the SMP allows that "requirements for providing on-site general public access, as distinguished from employee access, will not apply if the applicant can demonstrate one or more of the following: the cost of providing the access, easement or other public amenity on or off the development site is unreasonably disproportionate to the total long-term cost of the proposed development." The SMP includes a provision requiring proportionality in public access requirements. Included with the required changes is a change to Section 11.6.A making it clear that Section 11.6.A.3 applies to both onsite and offsite activities.

5. Jacek Pawlicki, Segale Properties LLC, written comment received during the comment period.

a. Buffer

The letter expresses concern that the buffer standards are designed to keep the area near the Green River clear for future improvement to the public infrastructure along the river. The letter expresses concern that rather than utilizing eminent domain, the City has elected to impose regulations. The letter states that the SMA does not grant the City authority to accomplish all of its goals and policies solely through regulation.

The letter states the view that the "no-build" buffers are intended to accomplish a "public benefit." It states that the "Attorney General has cautioned that"(i)f regulation or regulatory actions act more to provide a public benefit than to prevent a public harm, it should be evaluated using the takings analysis. . . ."

The letter argues that Ecology must modify the no-build buffer provision to be consistent with federal and state constitutional provisions.

City Response: The buffers were established based on a variety of factors as discussed in Section 7 of the SMP. Further, the buffer requirements have been evaluated as called for by the Attorney General, and are not a taking for the reasons explained above. See also responses to questions 2.b.

Ecology Conclusion: Ecology concurs with the City response.

b. Height Limits

Pawlicki argues that the SMP cannot impose height limits unless it makes a specific finding that the height of a building will block a substantial number of views. The letter goes on to state that since the City has not documented that buildings in shoreline jurisdiction will block views, Ecology should direct the city to justify the height limitation.

City Response: While the SMA affirmatively restricts building heights if views of a substantial number of single family homes will be blocked, this provision does not limit the City's ability to regulate the height of structures generally, as set forth in applicable height standards for different Zoning Code districts. These standards establish a variety of heights based on the intensity of the zoning district. Tukwila's SMP simply provides incentives to obtain increases in the height of buildings located within the shoreline jurisdiction.

Ecology Conclusion: Ecology concurs with the City response. RCW 90.50.320 requires that:

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

A building in shoreline jurisdiction that blocks a substantial number of residences cannot be greater than 35 feet in height. This does not limit the ability of a local government to regulate building height. RCW 90.58.320 provides a minimum standard that must be met.

6. Dean Patterson, Futurewise, written comment received during the comment period

a. Buffers and landscaping

The email generally supports the buffer strategy and landscaping standards. However, concern is expressed that broad exceptions to the general requirements may make the section largely pointless.

City Response: The City disagrees that broad exceptions make the buffers largely pointless – the mechanism by which a property owner may obtain approval for a reduced buffer is to re-slope the bank and plant with native plants. This will provide significant improvement in shoreline ecological functions, in exchange for buffer width reduction.

Ecology Conclusion: The Shoreline residential environment requires a 50 foot buffer. Many of the exceptions are currently part of the existing development pattern. Ecology does have concern regarding some of the potential encroachments allowed in the

shoreline buffer. Required changes to the SMP will somewhat minimize the extent of allowed encroachments.

Development on fill immediately behind a levee, requires a setback levee discussed in the SMP.

b. Ecological Functions

The text of the SMP does not acknowledge that buffers provide upland habitat for animals that depend on riparian areas. The email expresses concern that habitat functions of buffers for other species besides salmon were not discussed.

City Response: Comment noted. The net effect of the policies and regulations adopted to implement the SMP will be improved habitat, both riparian and upland.

Ecology Conclusion: The Inventory and Characterization Report does discuss riparian habitat. The Cumulative Impacts Analysis does anticipate some improvement in riparian habitat as the new buffers are implemented.

c. Protecting Remaining Intact Areas

The email states that the area between the Green River and Tukwila Park should not be designated Residential. This area has intact vegetation. The comment compares this to the stormwater pond at the end of Minkler Road. Futurewise recommends additional protection for both of these areas.

City Response: Comment noted; however, this area is in private ownership and must have both a zoning and comprehensive plan designation, which is why the area is designated Residential. The City does not have funds to purchase the site. Single family residential is less intensive than commercial, industrial or multi-family use and zoning designations. The area is steeply sloped and separated from the river by the Green River Trail. The vegetation is a mix of native and non-native plants and includes invasive species. Minkler Pond, a storm water pond, is located behind a COE certified levee – there is not much that can be done to expand the shoreline protection in this location due to the levee.

Ecology Conclusion: This site contains a substantial amount of riparian vegetation. For Tukwila, the riparian vegetation helps to retain important ecological functions even though the area is developed with highways and levees. Approximately 100 feet of this area landward of the Ordinary High Water Mark (OHWM) is in public ownership. This, while an Urban Conservancy designation would provide this area with a larger buffer than the Shoreline Residential designation, the buffer area is in public ownership. The shoreline Residential designation actually allows fewer uses and less intensive uses than the Urban Conservancy Environment. While an Urban Conservancy environment

designation is supportable for the site adjacent to Tukwila Park extending along the left bank of the Green River from Interurban Avenue to Southcenter Boulevard, it would not result in greater protection of the site.

d. Use and Modification Limits and Lack of Development Regulations

Futurewise is concerned that the use limits in the SMP are almost nonexistent. There are no prohibited uses and very few prohibited activities. Uses that are not prohibited could be allowed with a CUP.

Futurewise recommends that all use-types be described and clearly state whether they are allowed or prohibited.

Futurewise believes that since all of the different uses could be allowed, the SMP needs to have a complete set of regulations including those for mining, forestry, agriculture, aquaculture, in-stream uses, and so on. Futurewise is concerned that as drafted, boating facilities could be allowed in any environment.

City Response: The City disagrees with the characterization that the use limits in the SMP are almost nonexistent. A Use Table will be included in the SMP, and the buffer areas of each environment also limit the uses permitted. If a use is not listed as permitted either outright or as a conditional use, then it is not permitted in that shoreline environment, period. Mining, forestry, agriculture and aquaculture are not permitted in any shoreline environment by virtue of the fact that the uses are not listed as among those permitted, nor is it practical to expect that these uses would be proposed any time in the future. Boating facilities are a water dependent use and therefore a preferred use in the shoreline according to the SMA, as a result the City would want to encourage this type of use. Practically speaking, the condition of the river bank (over-steepened or leveed) discourages the location of boating facilities upstream of the turning basin.

Ecology Conclusion: Ecology will be proposing a required change to include a use matrix that addresses agriculture, mining, forestry, and aquaculture. The use matrix will affirmatively address whether the use is permitted conditionally permitted, or prohibited.

e. Urban Conservancy

Futurewise is concerned that all uses are allowed in the Urban Conservancy environment, which is not consistent with the purpose of the Shoreline Management Act's requirement "to protect and restore ecological functions."

City Response: The City acknowledges that the shoreline environments developed by Ecology do not fit most urban developed shorelines. The City's initial draft SMP applied the High Intensity Environment designation to most of the shoreline, but the Department of Ecology indicated that this environment designation is meant for areas that can reasonably expect water dependent uses. Ecology strongly encouraged the City to change the environment designation to Urban Conservancy, despite the fact that the Tukwila shoreline is highly urbanized and does not reflect the definition of the Urban Conservancy environment. The City complied with Ecology's request, and does not plan to change the shoreline environment designation at this point. There are a number of provisions in the City's SMP that encourage the restoration of ecological functions, with attention focused on publically-owned sites that have been designated for restoration.

Ecology Conclusion: Ecology concurs with the City response.

f. Water Dependent Uses

Futurewise could not find, in the SMP, how commercial and industrial uses meet the SMP Guideline requirements for water-dependent uses. Futurewise could find nothing in the regulations to implement the SMA preference for water-dependent uses.

City Response: The Urban Conservancy and High Intensity shoreline environments, in the buffer portion, permit "water dependent uses and their structures, if permitted in the underlying zoning district." In the Shoreline Residential environment, water dependent uses are permitted as long as there is no net loss to ecological functions. Practically speaking, the only portion of the river where water dependent uses can be expected to locate is the area downstream of the Turning Basin, given the shallow nature of the river upstream of this point and the over-steepened banks or existing levee system, both of which discourage direct access to the water.

Ecology Conclusion: In addition to the City discussion above, Ecology will propose a use matrix that will create categories for water-dependent uses.

g. Exemptions

Futurewise is concerned that the SMP does not contain procedures and criteria for reviewing shoreline exemptions. Concern is expressed that the SMP will not document exemptions or ensure that exemptions are properly implemented.

City Response: We are not aware of a requirement in the SMA regulations to include a process for reviewing shoreline exemptions. The City currently follows the process outlined in the WAC for exemptions and will continue to do so under the new SMP.

Ecology Conclusion: The City response is correct. Ecology will suggest, but not require, changes requiring documentation of review of shoreline exemptions.

7. Karen Walter, Muckleshoot Indian Tribe, written comment received during the comment period.

a. The Muckleshoot Indian Tribe (MIT) would like the SMP to be revised to acknowledge the importance of the Green-Duwamish River and associated shoreline tributaries for the Tribe's ceremonial, commercial and subsistence fisheries. MIT appreciates the specificity in the SMP regarding plans to improve the existing degraded river conditions.

City Response: Section 7.2, second bullet acknowledges the critical importance of the river as a resource for Muckleshoot Indian Tribe fishing.

Ecology Conclusion: Ecology concurs with the City response.

b. MIT expresses concern that many activities allowed within the OHWM and regulated shoreline have the potential to create structures or conditions that limit Tribal members' ability to access their treaty protected fisheries resources. MIT has suggested that the SMP provide direction for early coordination with the Tribe during project reviews. The SMP does not have policies in this regard.

City Response: : The SMP does not interfere with the Tribe's treaty fishing rights. To the contrary, by requiring a wider shoreline buffer, and public access, the SMP facilitates the Tribe's exercise of its treaty fishing rights. And, the SMP's requirements for shoreline buffers that allow for over-steepened banks to return to a more stable slope, and for landscaping and other riparian vegetation in certain circumstances, will help protect fish and fish habitat, and in turn also facilitate protection of tribal fisheries resources. The SMP also tries to balance the rights of all users of the shoreline. The City provides notice to the Tribe on applications that require public notice, through the Notice of Application phase of permit review. The City historically has not provided public notice on requests for shoreline exemptions as these are not a specified permit under the City's Zoning Ordinance. The SMP has specific direction to coordinate with the Tribe on archaeological resources (see Section 9.7). Finally, to the extent that the Tribe believes that a particular development proposal contravenes its treaty fishing rights, the Tribe can seek judicial enforcement of its treaty rights, as it has on other occasions. See, e.g., *Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504 (W.D. Wa. 1988).

Ecology Conclusion: Ecology believes that this aspect of the SMP is consistent with the SMA.

c. The MIT letter states that the current riparian conditions in the Green-Duwamish within Tukwila are generally poor. The letter notes high water temperatures. MIT expresses a concern that if implemented, the setback levee with a 15 foot wide vegetated bench will be too narrow to support the necessary trees needed to provide shade to lower existing high water temperatures. MIT also notes that the U.S. Army Corps of Engineers levee maintenance standards preclude trees in many areas. MIT notes that Ecology has used a 100 meter riparian vegetation width to model maximum potential shade scenarios for water temperatures. MIT would like the SMP modified so that opportunities for significant levee setbacks may be pursued and the riparian areas restored to the fullest extent possible within the 200 foot regulated shoreline area.

City Response: The adopted SMP establishes a reconfigured levee profile that adds an area of vegetation to slow down flood water, provide access for levee maintenance and improve ecological functions. The fifteen foot wide vegetated bench is an accepted width by both the Corps of Engineers (Seattle District) and King County Levee District. The City shares the Tribe's concerns about current and possible changes to the COE vegetation standards and has communicated these concerns to the COE.

Ecology Conclusion: For most of its shoreline jurisdiction, the City has proposed standard buffers of 100 feet or more. The exception is a 50 foot standard buffer in the Shoreline Residential environment. The larger issue is what actually happens in those buffers. The City correctly explains the difficulty in creating fully vegetated buffers. None the less, the buffer and vegetation requirements in the SMP can e expected to achieve no net loss of ecological function.

d. MIT also expresses concern that the trails immediately adjacent to the river will encourage access for illegal fishing and reduce shade along the river. MIT recommends that trails be set back from the river.

City Response: Trail locations are established on a site-by-site basis taking into account particular site conditions, such as topography, sensitive areas and other characteristics. Any new trails would not be located at the top of the bank, but set back an appropriate distance to permit at least visual access to the river (and in some instances physical access), depending on whether the trail is located adjacent to a City park.

Ecology Conclusion: Ecology concurs with the City response.

8. Dennis Clark, Green/Duwamish and Central Puget Sound Watershed Salmon Habitat Recovery (WRIA 9), written comment received during the comment period.

WRIA 9 endorses the Shoreline Restoration Plan and generally supports the use regulations, flood hazard reduction standards, shoreline stabilization standards and

vegetation protection landscaping standards. WRIA 9 recommends two minor changes to reflect project updates and an organization name change.

City Response: The City appreciates the comments from the Green/Duwamish and Central Puget Sound Watershed Salmon Habitat Recovery team.

Ecology Conclusion: Ecology concurs with the City response.

9. Brooke Alford, Green-Duwamish Watershed Alliance, written comment received during the comment period.

The Green-Duwamish Watershed Alliance supports the Tukwila proposed SMP. The letter notes the importance of buffers and the importance of reducing shoreline armoring.

City Response: The City appreciates the comments from the Green-Duwamish Watershed Alliance.

Ecology Conclusion: Ecology concurs with the City response.

10. Charles E. Maduell, law firm of Davis Wright Tremaine, representing the Innkeepers USA, written comment received during the comment period.

The Innkeepers USA are concerned about use, development and financial impacts that some of the new provisions in the SMP will have.

a. Buffers

Innkeepers USA is concerned that the 100 foot buffer adjacent to the Green River would make many structures on their properties nonconforming. Maduell believes that the proposed buffer is not justified to achieve no net loss of ecological function or bank stabilization, but rather, this an attempt to set aside land for future flood control structures without having the City purchase privately owned land for this purpose.

It is also stated that requiring a property owner to reslope the bank to a slope profile for construction and repair of levees in order to obtain a buffer reduction is unreasonable and unwarranted, both because it is cost-prohibitive and also not reasonably necessary to mitigate the shoreline impacts of proposed development. The comment states that this would unfairly allocate the burden of providing flood control measures and improvements on private property owners.

Maduell states that a 100 foot buffer is not needed to protect shoreline ecological functions or to achieve no net loss of such functions. Maduell believes that imposition

of a 100-foot buffer for flood control is inconsistent with the SMA and an unconstitutional taking.

The comment letter states that a 50 foot buffer for non-leveed and industrial properties is more than sufficient to protect shoreline ecological functions and ensure no net loss of function.

City Response: Section 7 of the SMP explains the rationale for the adopted buffer widths - the SMP attempts to balance private property rights and the requirements of the SMA. See also the response to comment 2.b. and 4.a.

The proposed buffer is not an attempt to set aside land for a future flood control structure, as no additional structures are planned for the river. The buffer widths are to protect new structures from being located too close to the water. Mr. Maduel is correct that existing buildings that are located within the buffer will become nonconforming and will be subject to the provisions of Section 14.5. The SMP does not require a property owner to re-slope the bank – that is an option available if a property owner wishes to reduce the buffer width on a particular parcel of property as part of redevelopment.

Ecology Conclusion: Ecology concurs with the City response.

b. Nonconforming use and Structure Limitations

Concern is expressed that the property will lose its legal, nonconforming status where the pre-existing use of all or a portion of the structure is changed to another use. This is a particular concern when the new buffer standards will make a structure nonconforming. The concern is expressed that this will make it difficult to redevelop the property.

The letter expresses concern that the only way for a property owner to obtain approval for a change of one nonconforming use to another, involving no exterior alterations to the existing building or impact shoreline functions and values, is to obtain a permit that would require the property owner to restore and/or enhance the entire shoreline buffer.

The letter states that the nonconforming use provisions are inconsistent with RCW 90.58.020 and various sections of the Shoreline Guidelines, as well as possibly be a taking. The letter writer encourages Ecology to modify the SMP to make it easier to locate a new nonconforming use in an existing commercial building.

City Response: There was lengthy discussion about these issues both at the Planning Commission and City Council. Section 14.5 tries to balance allowing existing uses that fall within the new buffer to continue or be replaced with a new use with the desire to amortize these uses over time. See also the response to comments 4.e – 4.h above.

Ecology Conclusion: The SMP has standard buffer provisions that can be reduced when reducing the levee profile consistent with the SMP. It also should be noted that the SMP has standard buffers for development that would prefer to engage in a more prescriptive design.

c. Vegetation and Landscaping

The letter expresses concern that imposing a requirement for installation and maintenance of vegetation and landscaping without consideration of the need for such requirements based on the impacts of development would be inconsistent with the SMA and the Shoreline Guidelines, as well as be a taking.

Maduell asks Ecology to modify the SMP to revise the SMP to require vegetation protection and landscaping to the extent that they are roughly proportional to or reasonably necessary as a direct result of impacts to shoreline functions and values from the proposed development.

City Response: The vegetation and landscaping requirements are similar to requirements already in place both in the existing SMP as well as Zoning Code requirements for landscaping when property is developed. There is language in Section 9.10 C.1 a. that allows proportional application of the landscaping requirements for projects that are not new development or full redevelopment on a site. Further, as discussed in response to comment 4.h above, the legal standards of “rough proportionality” and “reasonably necessary as a direct result of the impacts from development” do not apply to Tukwila’s adoption of the new Shoreline Master Program, because the SMP does not require dedication of real property, and because RCW 82.02.020 is inapplicable to Shoreline Master Programs. See, e.g., *Citizens for Rational Shoreline Planning v. Whatcom County*, 155 Wn.App. 937 (Div. I 2010).

Ecology Conclusion: Ecology concurs with the city response.

d. Public Access

The letter expresses concern regarding the public access requirements for new or expanded developments over 3,000 square feet. While the letter acknowledges that the SMP contains a provision that allows some relief from some of the public access requirement, concern is expressed that such relief does not appear to extend to the requirement that a property owner upgrade an existing trail along the shoreline regardless of the impacts to public access that a development may have. Maduell states that this is inconsistent with certain provisions of the SMA and the Shoreline Guidelines, and may be a taking. To address the concern, Maduell asks Ecology to modify the SMP to only require public access when the requirements are roughly

proportional to or reasonably necessary as a direct result of the impacts from the proposed shoreline development.

City Response: Section 11.1 states the Director will review the scope of a project to determine a reasonable amount of public access to be carried out and that depending on the amount of increase in demand for public access, the alternative provisions in Section 11.6 C. may be utilized. These provisions would apply to a project on a site that abuts the trail or is located in an area where no trail is located or anticipated. Further, as discussed in response to comment 4.h above, the legal standards of "rough proportionality" and "reasonably necessary as a direct result of the impacts from development" do not apply to Tukwila's adoption of the new Shoreline Master Program, because the SMP does not require dedication of real property, and because RCW 82.02.020 is inapplicable to Shoreline Master Programs. See, e.g., *Citizens for Rational Shoreline Planning v. Whatcom County*, 155 Wn.App. 937 (Div. I 2010).

Ecology Conclusion: Section 11.6.A.3 of the SMP allows that "requirements for providing on-site general public access, as distinguished from employee access, will not apply if the applicant can demonstrate one or more of the following: the cost of providing the access, easement or other public amenity on or off the development site is unreasonably disproportionate to the total long-term cost of the proposed development." The SMP effectively includes a provision allowing for proportionality in public access requirements. Included with the required changes is a change to Section 11.6.A making it clear that Section 11.6.A.3 applies to both onsite and offsite activities.

